inate or restrain organizations already in the field; nor were they formed to prevent or hinder or restrain other organizations from entering into the business of
3100 prepaid medical care; but on the contrary, they were formed to meet the social need which had arisen for group medical care, eliminating the element of private profit, over and above legitimate hospital and medical charges.

46. As used in this finding, the expression to "take tickets" means that a doctor rendering services to a member of a prepaid medical care plan sends his statement for services to the corporation or other organization owning or controlling said plan, and accepts checks from said organization. The Court finds that there is no present conspiracy, combination, agreement or concert of action among doctors not to "take tickets" of privately owned hospital associations; nor is there any conspiracy, combination, agreement or concert of action among doctors not to accept payment from privately owned hospital associations. The Court further finds that refusal by doctors to "take tickets" of or accept payment from privately owned associations is not boycott.

The Court further finds that the private hospital associations operating in Oregon have not insisted or requested that doctors "take tickets" and that the contracts of such associations do not obligate them to make payment to doctors who "take tickets." Both under such contracts and the practice of such hospital associations, if the patients receive from the doctors itemized statements of services rendered, the doctor has cooperated with the association. The Court further finds that there is no combination or conspiracy or concert of action of the defendants or the doctors or Oregon to refuse to render such itemized statements to patients who may be entitled to reimbursement from such private hospital associations.

47. If some or all the defendants at any time boycotted privately owned hospital associations, the Court finds that none of the defendants in recent times has boycotted privately owned hospital associations, and that none of the defendants, so far as the evidence or legitimate inferences show, has any intention to boycott privately-
3101 owned hospital associations in the future.

48. While the complaint alleged a restraint on hospitals by defendants, no substantial evidence was offered in support thereof, and the Court finds that none of

the defendants in any manner restrained hospitals or hopsital services or the opportunities of doctors or of patients to obtain hospital services.

49. At no time within recent years has the membership in any medical society been denied to any doctor because of his connection with any private hospital association.

50. The number of physicians and surgeons in the State of Oregon licensed to practice medicine and surgery and also the number of members of Oregon State Medical Society during each of the years from 1936 to 1948, both inclusive, were approximately as follows:

Year	Number of Licensed Physicians and Surgeons	Number of Members of Oregon State Medical Society
1936	1215	742
1937	1253	755
1938	1272	746
1939	1278	774
1940	1343	839
1941	1338	866
1942	1295	906
1943	1097	932
1944	1039	982
1945	1042	1000
1946	1428	1010
1947	1566	1142
1948	1660	1210

51. Columbia County Medical Society knew of no doctors or members of hospital staff not members of their society. Only one or two doctors in Clackamas County have not belonged to the Physicians Association of Clackamas County. All the doctors in Douglas County have been members of the Douglas County Medical Society. With the exception of a couple of doctors whose licenses were taken away, one doctor who resigned, and one doctor not residing in Jackson County, all doctors practicing in the county were members of Jackson County Medical Society.

The only doctors practicing within Marion and
3102 Polk Counties who have not been members of the defendant society have been doctors employed by the Oregon State Hospital. In 1949 the Multnomah County Medical Society had at least 600 members.

Based upon the foregoing Findings of Fact, the Court enters the following

Conclusions of Law

I.

Medical societies have the right to take such steps as to them shall be deemed appropriate for the purpose of upholding the standards of the medical profession. The exercise of this right was the sole purpose and motive of defendant Multnomah County Medical Society in proceedings prior to 1941 for the expulsion of members; and has been the purpose and motive of other acts of defendants herein, as shown by the evidence.

II.

Neither individual doctors nor medical societies are, in the absence of contract, under any obligation to assist or cooperate with commercial hospital associations or other organizations contracting for the furnishing of medical care.

III.

Defendants are not guilty of any of the charges set forth in the complaint.

IV.

In view of the Findings and Conclusions of the Court, it is unnecessary for the Court to pass upon the question whether interstate commerce is involved in the practice of medicine or in the sale of prepaid medical care or in any alleged acts or conduct of any defendants, as alleged in the complaint.

3103 V.

A final judgment should be entered in this action dismissing plaintiff's complaint and action with prejudice.

Dated this 3rd day of November, 1950.

(Signed) Claude McColloch
Judge

3104 A copy of foregoing proposed Findings of Fact and Conclusions of Law has this day been mailed to attorneys for plaintiff at Washington, D. C.

Dated this 2nd day of November, 1950.

Griffith, Peck, Phillips & Coughlin

Cake, Jaureguy & Tooze

By (Signed) Nicholas Jaureguy
Of Attorneys for Defendants

3105 IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF OREGON

[FILE ENDORSEMENT OMITTED]

Civ. No. 4255 87-287

UNITED STATES OF AMERICA,

Plaintiff,

—v.—

OREGON STATE MEDICAL SOCIETY, et al.,

Defendants.

Judgment

Filed Nov. 3, 1950

The above entitled cause having heretofore been tried before the undersigned, one of the Judges of said Court, and the Court having heretofore rendered an opinion and entered its Findings of Fact and Conclusions of Law from which it appears that defendants are entitled to judgment;

It is therefore hereby ORDERED and ADJUDGED that plaintiff's complaint and action be and the same are hereby dismissed.

DATED this 3rd day of November, 1950.

(Signed) CLAUDE McCOLLOCH
Judge

Letter, Nicholas Jaureguy to Hon. Claude McColloch, Oct. 9, 1950, Enclosing Proposed Findings

CAKE, JAUREGUY & TOOZE
ATTORNEYS AT LAW
1220 EQUITABLE BUILDING
PORTLAND 4, OREGON
CAPITOL 1323

RALPH H. CAKE
NICHOLAS JAUREGUY
LAMAR TOOZE
HERBERT C. HARDY

HAROLD B. HUTCHINSON
DWIGHT L. SCHWAB
DENTON G. BURDICK, JR.
LAMAR TOOZE, JR.

October 9, 1950

Hon. Claude McColloch
United States Court House
Portland, Oregon

Re: *United States* v. *Oregon State Medical Society, et al.*

Dear Judge McColloch:

We are presenting to you herewith proposed Findings of Fact and Conclusions of Law on behalf of defendants. We believe we have covered every proposed finding discussed or set forth in your recent opinion. We have also proposed certain findings and conclusions not referred to in your opinion.

We have not in every instance endeavored to follow the language which you used in stating findings that you would make. We believe, however, that except as hereinafter stated the language of our proposed findings fairly sets forth the substance of the findings you stated you would enter, in each case in which your opinion referred to the particular matter involved. The exceptions are as follows:

1. On page 9 of your opinion you stated you would make a finding with respect to the use of hospital facilities, indicating that in certain cases defendants had restrained the use of hospital facilities by others. Our proposed finding number 31 is to the contrary; but we there state that members of defendant societies have done so. The only evidence we recall on the subject involved Emanuel Hospi-

tal. While one of the doctors on the committee which recommended denial of use of staff privileges was Vice-President of defendant Multnomah County Medical Society, we believe that this cannot properly be said to be an action of any defendant.

3107 2. On page 15 of your opinion you refer to the practice of medicine as not being a trade within the meaning of the Sherman law. Our proposed findings 41 and 42 include commerce as well as trade, and the congressional grant of power as well as the Sherman law. Number 42 also extends this finding to the sale of medical services. The *American Medical* case of course construed only Section 3 of the Sherman Act. A more extended discussion of this is on pages 91-101 of our brief, which we furnish you herewith.

3. In our proposed finding number 44 we state that the Court makes no finding with respect to the government's contention with respect to fee fixing. It is there stated that the reason for this, in addition to the reason stated in your note 7, page 28, is that there was no charge of fee fixing in the complaint.

Very truly yours,

CAKE, JAUREGUY & TOOZE

By (Signed) NICHOLAS JAUREGUY

NJ:j

cc: Plaintiff's attorneys.
Washington, D. C.

JOHN J. COUGHLIN

3108 IN UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

[TITLE OMITTED]

Defendants' Proposed Findings of Fact and Conclusions of Law

The above entitled cause came on for final hearing before the undersigned, one of the judges of the above entitled court on the 18th day of October, 1949. Plaintiff appeared by its attorneys, Philip Marcus, Special Assistant to the Attorney General, Isidore Cohen, Gerard G.

Galassi, Robert H. Weinstein, Special Attorneys, and defendants appeared by Nicholas Jaureguy (of Cake, Jaureguy & Tooze) and John J. Coughlin (of Griffith, Peck, Phillips & Coughlin), Thereupon, after opening statements, evidence was introduced by the plaintiff and by the defendants and the trial was adjourned from time to time until the 11th day of February, 1950, when all parties rested, subject to certain further proceedings. The Court took said case under advisement and having considered a brief filed by plaintiff, thereafter rendered its written opinion, findings and notes, and being now fully advised in the premises, makes the following.

Findings of Fact

1. Defendant, the Oregon State Medical Society is an unincorporated association, having its office and principal place of business in Portland, Oregon.

2. Defendant, the Oregon Physicians' Service, is a corporation incorporated under the laws of the State of
3109 Oregon and having its office and principal place of business in Portland, Oregon. The Oregon Physicians' Service furnishes prepaid medical, surgical and hospital care on a prepaid contract basis. It is sponsored and approved by the Oregon State Medical Society. The great majority of its stockholders and participating physicians are also members of that society.

3. Defendants Clackamas County Medical Society, Clatsop County Medical Society, Columbia County Medical Society, Douglas County Medical Society, Jackson County Medical Society, Lane County Medical Society, Marion-Polk Counties Medical Society and Multnomah County Medical Society are unincorporated associations. Multnomah County Medical Society has an office and place of business in Portland, Multnomah County, Oregon. None of said other defendants has any office or place of business. Each of said defendants is to a limited affiliated with defendant Oregon State Medical Society.

4. Defendant W. W. Baum is a doctor at Salem, Oregon. He is a member of the Oregon State Medical Society.

5. Defendant John Besson is a doctor of Portland, Oregon. He is a member of the Oregon State Medical Society.

6. Defendant J. P. Brennan is a doctor at Pendleton, Oregon. He has been an officer or director of one or more of defendant corporations or associations during all or part of the times alleged in the complaint.

7. Defendant John H. Fitzgibbon is a doctor at Portland, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

8. Defendant Charles E. Hunt is a doctor at Eugene, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

9. Defendant Gordon B. Leitch is a doctor at Port-
3110 land, Oregon. He has been an officer or director of one or more of the defendant corporations or associations during a part of the times alleged in the complaint.

10. Defendant K. H. Martzloff is a doctor at Portland, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

11. Defendant E. H. McLean is a doctor at Oregon City, Oregon. He has been an officer of one or more of the defendant associations during all or part of the times alleged in the complaint.

12. Various organizations in Oregon are engaged in the business of paying for or supplying medical care to individuals, groups of individuals, and business concerns on a contract basis.

13. No organizations with offices outside of Oregon offer to make or do make contracts with residents of Oregon for prepaid medical, surgical or hospital care or allied services.

14. Organizations having their main offices in Oregon have sold prepaid medical care policies in the states of Oregon, Washington and California. Organizations doing prepaid medical insurance business in the State of Oregon use interstate transportation and transmission facilities to transmit across state lines policies, reports, instructions and correspondence, and reports and communications go between said Oregon organizations and agents, doctors and customers located in states other than Oregon. Medical care policies and payments thereon by policy holders have gone in interstate commerce between the State of Oregon and other states. Prepaid medical policies issued by Oregon organizations cover reimbursement for medical care required by Oregon residents while in other states. Said Oregon organizations arrange to pay for said medical care rendered by doctors, hospitals and others in other

states. All of these transactions necessitate dealings between said Oregon organizations and individuals and organizations in other states.

3111 15. Organizations engaged in the sale and furnishing of prepaid medical care in Oregon from time to time in connection with first aid supplies furnished by them, purchase and procure medicines, drugs, medical supplies and instruments shipped from other states into the State of Oregon.

16. Many industrial concerns located in Oregon are parties to contracts with organizations under which their employees secure prepaid medical care. Industrial concerns having places of business in some other states carry prepaid medical insurance for their employees with prepaid medical care organizations having their main offices in Oregon. Some of their employees reside in states other than Oregon.

17. Doctors practicing in Oregon treat patients who have come from other states to secure medical care in Oregon. The facilities of hospitals located in Oregon are sometimes used by residents of other states who have come to Oregon for the purpose of using said facilities. Similarly, doctors in other states sometimes treat patients coming from the State of Oregon, and hospitals in other states are used by residents of Oregon.

18. Medicines, drugs, medical supplies and equipment continuously come into the State of Oregon as the result of medical care by Oregon doctors and hospitals.

19. Unless doctors and hospitals in Oregon provide medical treatment to members of prepaid medical care programs, performance of contracts for prepaid medical care is made impossible.

20. None of the defendants, either at any of the times set forth in the complaint or at any other time, have attempted to, or have been engaged in any combination or conspiracy to, restrain or monopolize the business of selling or furnishing prepaid medical care in the State of Oregon or elsewhere; or to restrain or monopolize interstate trade or commerce in said business; nor do any of the defendants threaten or intend to do so.

3112 21. There has been no conspiracy, agreement, combination or concert of action among the defendants during the times alleged in the complaint or at any other time (a) to monopolize or attempt to monopolize

prepaid medical care business in the State of Oregon or between the State of Oregon and other states, or (b) to limit the scope of medical care to be provided by prepaid medical care plans in the State of Oregon, or (c) to prevent, hinder or obstruct prepaid medical care organizations other than those sponsored by defendants, or any of them, from continuing to engage in or from engaging in the business of selling or furnishing prepaid medical care in Oregon or elsewhere, or (d) to restrain residents of Oregon or other states from entering into or continuing under prepaid medical care plans not sponsored or supported by defendants, or any of them, or (e) to prevent doctors from cooperating in prepaid medical care plans not sponsored or approved by defendants, or (f) to restrict the use of hospital facilities by doctors cooperating in prepaid medical care plans other than those sponsored or approved by defendants, or (g) to prevent Oregon hospitals from allowing their facilities to be used by doctors or patients associated with prepaid medical care plans other than those sponsored or approved by defendants.

None of the defendants has conspired or combined or agreed or proceeded by concert of action or otherwise to restrain or monopolize trade or commerce in the manner or by the means charged in plaintiff's complaint, or otherwise.

22. Prior to 1941, some of the defendants advised doctors not to cooperate with commercial prepaid medical care organizations in certain practices engaged in by them, but such action on the part of certain of the defendants was not the result of any conspiracy or combination or attempt to restrain or monopolize the business of prepaid medical care, but was for the purpose of maintaining the standards of medical practice among the members of medical
3113 societies.

23. Prior to 1941, defendant Multnomah County Medical Society expelled certain members who were associated with certain types of contract practice and threatened the expulsion of other members so engaged, but such action by said defendant society was not the result of any combination, agreement or conspiracy in restraint of trade or commerce or otherwise and was for the purpose of maintaining and advancing the standards of medical practice of members of said defendant society; and no other defendant has ever expelled, threatened or incited the expulsion from medical societies of any doctors because of any cooperation in prepaid medical care plans, and since

1941, none of the defendants has expelled, threatened or incited the expulsion from medical societies of doctors cooperating in medical care plans other than those sponsored by the defendants.

24. Defendants have formed and promoted certain prepaid medical care plans, but such action on the part of defendants was not pursuant to any conspiracy, combination or attempt to restrain or monopolize trade or commerce and was not with the intent to drive out, hinder and obstruct commercial prepaid medical care plans operating in the State of Oregon, but it was with the intention to compete with such commercial medical care plans; and such plans have not been driven out of the State of Oregon by defendants; and have not been hindered or obstructed, except as they may be affected by legitimate competition of plans sponsored by defendants.

25. None of the defendants at any time has interfered with or attempted or combined or conspired to interfere with commercial prepaid medical care organizations in obtaining hospital facilities for their members.

26. None of the defendants at any time has refused to treat patients or caused others to refuse to treat, or
3114 combined or conspired to refuse to treat any patients who were members of any prepaid medical care plan, or discriminated against any such patients by reason of such membership.

27. None of the defendants has refused or encouraged other doctors to refuse, or conspired or combined to refuse, to give patients itemized statements to enable the patients to be reimbursed under any plan of prepaid medical care.

28. None of the defendants has refused to consult or assist, or encouraged others not to consult or assist, or conspired or combined to refuse to consult with, doctors who treat members of any prepaid medical care plan.

29. None of the defendants has spread any false propaganda for the purpose of discrediting prepaid medical care plans not endorsed by defendants.

30. It has been the policy of the defendants either to furnish or to encourage others to furnish prepaid medical care throughout the State of Oregon. In counties where some local prepaid medical care plan operated by the local doctors has been in force, Oregon Physicians Service has not attempted to interfere with any such plan and has not,

with certain exceptions, sold prepaid medical care contracts in any such locality.

Oregon Physicians' Service was intended to be an agency, and has in fact been an agency, to provide a prepaid medical care plan in Oregon by a doctor-sponsored group in areas where such a plan has not yet been organized by the local doctors, and in cases where groups of patients live or work in more than one county; and in cases where the local doctors' plan has not yet provided for auxiliary contracts, such as "family contracts" or "individual contracts". Oregon Physicians' Service provides for medical and hospital care, in one form or another, in every county in Oregon. Most of the doctors participating in the local doctor-sponsored plans are also participating physicians of Oregon Physicians' Service.

3115 No local plan of prepaid medical care sponsored by doctors of any county has attempted to sell contracts for prepaid medical care in other counties without the consent of the doctors in such other counties who would render the services provided in said contracts. The reasons for these policies are, first, that defendants believe that doctors should not attempt to sell the services of other doctors without their consent, and, second, competition between two doctor-sponsored plans in a single county is impractical, since the same doctors must render services under whatever plans are in operation. These policies and the carrying out of these policies have not been a result of any conspiracy or combination in restraint of trade or commerce and has not resulted in restraining or monopolizing the business of selling or furnishing prepaid medical care.

31. None of the defendants has conspired, combined or attempted at any time to make hospital facilities in Oregon available only to members of defendant Oregon State Medical Society or its component county medical societies, nor have the defendants or any of them ever restricted or excluded other qualified doctors from the use of hospital facilities by others; there have, however, been members of one or more defendant societies who have sought to prevent the use of hospital facilities by other doctors, but only in cases of lawful and legitimate professional discipline of individual doctors for unprofessional conduct detrimental to their patients, to the hospitals and to the public generally, which conduct had no relationship to prepaid medical care business.

32. No act or conduct on the part of defendants has prevented or hindered prepaid medical care organizations in entering into or expanding their business in Oregon, except that defendants through prepaid medical care organizations sponsored by them have entered into lawful competition with prepaid medical care organizations other than those sponsored by them; nor has the business
3116 of any such organization outside the State of Oregon been impeded or impaired in its ability to do business by any conduct on the part of any of the defendants other than such competition.

33. No act of the defendants has had the effect (a) of depriving any member of the public of a fair and free opportunity to acquire prepaid medical care insurance from organizations competing with one another in a free market, nor (b) of causing any members of the public to be deprived of medical care, nor (c) of causing business concerns to be deprived of any opportunity to obtain prepaid medical care insurance for their employees in an unrestrained market, nor has the business of any such business concerns been adversely affected by acts or conduct of any defendants, nor (d) of causing doctors to be deprived of any opportunity to practice medicine on terms of their own choosing, nor (e) of causing doctors to be denied the use of hospital facilities in Oregon, nor (f) of causing hospitals to be denied the privilege of making their facilities available to doctors and members of the public, nor (g) of causing the market for the sale and distribution of medicines, drugs, medicine supplies and medical equipment to be restricted.

34. Defendant medical societies are voluntary associations. Membership or non-membership in any of defendant societies has no effect on the privilege to practice medicine in Oregon under state laws. Membership on a hospital staff in Oregon is granted or withheld by the governing body of the particular hospital and has not been granted or withheld from any doctor because of his connection with any prepaid medical care organization, whether such organization was sponsored by defendants or not.

No doctor has been deprived of any staff membership in any hospital in Oregon because of his connection with any prepaid medical care organization not sponsored by defendants.

35. It is common knowledge, of which this court
3117 takes judicial knowledge, that there are many insurance companies within Oregon selling prepaid med-

ical care plans in the form of indemnity insurance. No proof has been adduced as to the volume of such business, but such volume is large. Defendants approve all indemnity insurance plans, and have approved such plans through the period involved in this suit. No attempt has been made by the plaintiff to prove restraint upon such plans by defendants.

36. In the early days of the period made the subject of this suit, hospital associations engaged in many practices which interfered with the doctor-patient relationship in Oregon and which were not to the best interests of the doctors' patients. These practices had the effect of increasing the profit of the associations. Because of these practices, the hospital associations alienated individual doctors. Some doctors who were practicing during such early period still hold animosity against such associations. But with the evolution of the hospital association business, and the gradual tendency to eliminate abuses, and the coming of new doctors on the scene, the past is gradually becoming forgotten.

37. The motive and intent of defendants has not been to restrain or monopolize, and monopoly has not in fact resulted and does not exist, nor does any unreasonable restraint exist in the business of prepaid medical care or the furnishing of medical care by reason of any act or conduct of defendants, or any of them.

38. If there was a conspiracy prior to 1941, as alleged by the Government, the Court finds that a large percentage of Oregon doctors entered the armed forces in the period 1941-1945, and that at that time the thread was broken and the conspiracy ended.

39. If there was a conspiracy, as alleged by plaintiff, prior to 1941, the Court finds that the thread was broken and the conspiracy ended when the organized doctors
3118 of Oregon reversed their position in 1941 in regard to offering a plan for prepaid medical care and engaged in contract practice through the medium of their own organization, defendant Oregon Physicians' Service; and if the defendants or any doctors of Oregon had previously been conspirators, they then became competitors, competing with the existing privately owned and operated prepaid medical care organizations.

40. Defendant Oregon Physicians' Service and also the doctor-owned county and regional prepaid medical care

plans are business competitors with the privately-owned profit making organizations operating in the State of Oregon and, as competitors, the defendants and other doctors of Oregon have conducted their organizations fairly and well within the legal limitations of competitive business practice.

41. The practice of medicine as conducted within the State of Oregon by doctors of Oregon, including defendants, is not trade or commerce within the meaning of Section 1 of the Sherman Antitrust Law, nor is it commerce within the meaning of the Constitutional grant of power to Congress "to regulate commerce . . . among the several states".

42. The sale of medical services, whether by a plan of prepaid medical care or otherwise, as conducted within the State of Oregon, is not trade or commerce within the meaning of Section 1 of the Sherman Antitrust Law, nor is it commerce within the meaning of the Constitutional grant of power to Congress "to regulate commerce . . . among the several states".

43. If there has been any restraint of trade by reason of any act or conduct of the defendants, or any of them, the Court finds that such restraint was and is not unreasonable.

44. The Government in its brief charges that defendants have engaged in fee fixing. The Court makes no finding with respect to this contention for the following reasons:

3119 First: No charge of fee fixing is contained in the complaint;

Second: The question of fee fixing has become academic in the present case because the case revolves around the legitimacy of the operations of the doctors in competition with the privately owned plans. The Government concedes the right of the doctors to compete in this field and the fixing of fees is of the very essence of all prepaid plans, whether doctor-owned or privately owned.

45. Defendant Oregon Physicians' Service and the various county or regional doctor-owned or doctor-sponsored prepaid medical plans were not formed to eliminate or restrain organizations already in the field; nor were they formed to prevent or hinder or restrain other organizations from entering into the business of prepaid medical

care; but on the contrary, they were formed to meet the social need which had arisen for group medical care, eliminating the element of private profit, over and above legitimate hospital and medical charges.

46. As used in this finding, the expression to "take tickets" means that a doctor rendering services to a member of a prepaid medical care plan sends his statement for services to the corporation or other organization owning or controlling said plan, or accepts checks from said organization, or both. The Court finds that there is no present conspiracy, combination, agreement or concert of action among doctors not to "take tickets" of privately owned hospital associations. The Court further finds that refusal by doctors to "take tickets" of privately owned associations is not boycott.

The Court further finds that the private hospital associations operating in Oregon have not insisted or requested that doctors "take tickets" and that the contracts of such associations do not obligate them to make payment to doctors who "take tickets". Both under such con-
3120 tracts and the practice of such hospital associations, if the patients receive from the doctors itemized statements of services rendered, the doctor has cooperated with the association. The Court further finds that there is no combination or conspiracy or concert of action of the defendants or the doctors of Oregon to refuse to render such itemized statements to patients who may be entitled to reimbursement from such private hospital associations.

47. If some or all the defendants at any time boycotted privately owned hospital associations, the Court finds that none of the defendants in recent times has boycotted privately owned hospital associations, and that none of the defendants, so far as the evidence or legitimate inferences show, has any intention to boycott privately-owned hospital associations in the future.

48. While the complaint alleged a restraint on hospitals by defendants, no substantial evidence was offered in support thereof, and the Court finds that none of the defendants in any manner restrained hospitals or hospital services or the opportunities of doctors or of patients to obtain hospital services.

49. Oregon has a population of approximately 1,510,000 persons, and of this number approximately 120,000 are subscribers to the services of Oregon Physicians' Service.

The plaintiff concedes that a greater portion of the population of the State of Oregon is covered by prepaid medical care plans than of any other state.

50. At no time within recent years has the membership in any medical society been denied to any doctor because of his connection with any private hospital association.

3121 Based upon the foregoing Findings of Fact, the Court enters the following

CONCLUSIONS OF LAW

I.

Medical societies have the right to take such steps as to them shall be deemed appropriate for the purpose of upholding the standards of the medical profession. The exercise of this right was the sole purpose and motive of defendant Multnomah County Medical Society in proceedings prior to 1941 for the expulsion of members; and has been the purpose and motive of other acts of defendants herein, as shown by the evidence.

II.

Neither individual doctors nor medical societies are, in the absence of contract, under any obligation to assist or cooperate with commercial hospital associations or other organizations contracting for the furnishing of medical care.

III.

Defendants are not guilty of any of the charges set forth in the complaint.

IV.

In view of the Findings and Conclusions of the Court, it is unnecessary for the Court to pass upon the question whether interstate commerce is involved in the practice of medicine or in the sale of prepaid medical care or in any alleged acts or conduct of any defendants, as alleged in the complaint.

V.

A final judgment and decree should be entered in this action dismissing plaintiff's complaint with prejudice.

Dated this ..... day of ....., 1950.

.....

Judge.

3122 The foregoing proposed Findings of Fact and Conclusions of Law are hereby tendered by defendants. A copy has this day been mailed to Attorneys for Plaintiff at Washington, D. C.

Dated this 9th day of October, 1950.

CAKE, JAUREGUY & TOOZE

By (Signed) NICHOLAS JAUREGUY

GRIFFITH, PECK, PHILLIPS & COUGHLIN

By (Signed) JOHN J. COUGHLIN

Attorneys for Defendants.

Letter, Wm. Amory Underhill to Hon. Claude McColloch, October 19, 1950, Enclosing Objections to Defendant's Proposed Findings

Honorable Claude McColloch
United States District Court
Portland, Oregon

3123 October 19, 1950

Re: *United States v. Oregon State Medical Society, et al.*

My dear Judge McColloch:

We appreciate your Honor's affording us an opportunity to object to the defendants' proposed findings and to submit proposals of our own. Since almost all the findings we would want to propose would conflict with your Honor's decision and findings made therein, we have decided that we will refrain from submitting formal proposed findings, except a few relating to membership in the defendant medical societies. We shall, however, propose some amendments to defendants' proposed findings, and in commenting upon defendants' proposed findings indicate what we deem should be the proper findings. It is our position, moreover, that a correct decision would be supported by findings made in the form and order stated in the table of contents to the plaintiff's trial brief, and in accordance with the facts stated under each heading and subheading in that brief.

We enclose herewith our statement of objections, amendments, and proposals.

Sincerely yours,

WM. AMORY UNDERHILL
Acting Assistant Attorney General

cc: Mr. Jaureguy
Mr. Coughlin

3124 IN THE UNITED STATES DISTRICT COURT

[TITLE OMITTED]

Statement of Objections and Amendments to Defendants' Proposed Findings, and Additional Proposed Findings

3125 STATEMENT OF OBJECTIONS AND AMENDMENTS TO DEFENDANTS' PROPOSED FINDINGS AND ADDITIONAL PROPOSED FINDINGS

We have no objections to defendants' proposed findings Numbers 1 and 2.

With respect to proposed finding Number 3, we believe the phrase in the next to the last line, "to a limited extent", should be deleted. If anything, the phrase should be "is closely affiliated".

With respect to proposed findings Number 4, since it is undisputed that defendant Baum was president of the Oregon State Medical Society and a director of the Oregon Physicians Service, the finding made with respect to him should correspond with the finding made with respect to defendant Brennan in proposed finding Number 6.

With respect to proposed finding Number 5, we believe there should be added that during part of the times alleged in the complaint defendant Besson was on the Council of the Oregon State Medical Society and the Multnomah County Medical Society.

We do not object to findings 6, 7, 8, 9, 10, and 11. We believe, however, that our brief furnishes undisputed basis for further findings showing the participation of these defendants in the activities of the other defendants and in the conspiracy charged.

We do not object to proposed finding Number 12.

Proposed finding Number 13 should not be made. It has no basis in the Court's decision and no basis in fact. For instance, the Court will recall that Northern Permanente Foundation had offices in Vancouver, Washington. If the Court were to take judicial notice, as requested, in proposed finding Number 35 with respect to Oregon Companies engaged in the indemnity insurance business, then it should take judicial notice of the fact that there are a great many insurance companies outside of Oregon engaged in health or hospital insurance some of which undoubtedly have Oregon subscribers.

3126 With respect to proposed finding Number 14, we suggest an additional sentence after the first sentence to the effect, "Some of such organizations have sold

individual and family policies in many other states". Your Honor will recall that Mr. Bechtold testified they had individual and family policy holders in almost every state in the union. We suggest also that as a concluding sentence there be added: "There is a regular and two way flow from and to Oregon of such communications, payments and premiums."

With respect to proposed finding Number 15, we suggest that there be deleted from this proposed finding the words "first aid supplies furnished by them." Your Honor will recall that there was uncontradicted testimony that the commercial organizations had pharmacies in their Portland offices available to their subscribers. Also, the exhibits in evidence show many instances of purchases of medicines and drugs not in the nature of first aid supplies, from out of state sources.

We have no objection to proposed finding Number 16.

With respect to proposed finding Number 17, we think that before the words "medical care" in the second line the word "prepaid" should be inserted, or, in lieu thereof, a new sentence be added at the end of that sentence to the effect that "A number of such patients are policy holders of Oregon prepaid medical care organizations." Along the same lines, we believe the last sentence of proposed finding Number 17 should be changed to "Doctors in other states sometimes treat members of Oregon prepaid medical care organizations coming from the State of Oregon, and Hospitals in other states are used by residents of Oregon, including some members of Oregon prepaid medical care organizations."

With respect to proposed finding Number 18, we think at the end of the second line the word "prepaid" should be added. We think there should also be added the sentence "From time to time interstate ambulance service has been provided by Oregon prepaid medical care organiza-
3127 tions."

We do not object to proposed finding Number 19.

With respect to proposed finding Number 20, we object to this finding but believe it conforms to the statement made by the Court in its decision. We think that the proper finding should be as follows: "All the defendants have attempted to and have been engaged in a combination and conspiracy to restrain and monopolize the business of selling or furnishing prepaid medical care in the State of Oregon and to restrain and monopolize interstate trade and commerce therein."

With respect to proposed finding Number 21, we object to this finding as being contrary to the facts of this case and any reasonable inference therefrom. We think that the finding should be: "There has been a conspiracy, agreement, combination and concert of action among defendants during the time alleged in the complaint [as described in defendants' proposed finding Number 21]."

We object to proposed finding Number 22 as being contrary to the facts of this case and any reasonable inference therefrom. We think the proper finding should be: "Prior to and since 1941 the defendants advised, coerced, and persuaded doctors not to cooperate with commercial prepaid medical care organizations."

With respect to proposed finding Number 23, we object to so much of the finding as starts with the word "but" in the fourth line, on the ground that it is contrary to the facts in this case and inconsistent with any reasonable inference to be derived from such facts. With respect to the first part of that finding, we believe there should be added after the word "appear" the words "suspended and caused to resign." We think the proper finding should be: "Prior to 1941 defendant Multnomah Medical Society expelled certain members associated with unapproved prepaid medical care organizations."

With respect to proposed finding Number 24, plaintiff objects thereto but believes it conforms to the statement made in the decision of this Court. We think the proper finding should be: "Defendants formed or promoted certain prepaid medical care plans with the intention to eliminate, hinder or obstruct unapproved prepaid medical care plans and succeeded in so doing."

3128 With respect to proposed findings Numbers 25, 26, 27, 28, and 29, plaintiff objects on the ground that they are contrary to the facts of the case and any reasonable inference from such facts. We think the proper finding with respect to proposed finding Number 25 should be: "Defendants have attempted to and combined and conspired to interfere and have interfered with commercial prepaid medical care organizations in obtaining hospital facilities for their members."

We think the proper finding for proposed finding Number 26 should be: "Defendants have caused doctors to refuse to treat patients who were members of unapproved medical care organizations and have caused discrimination and have themselves discriminated against such patients by reason of such membership."

With respect to proposed finding Number 27, we think that the correct finding should be: "Defendants have refused and encouraged and coereed others to refuse to accept tickets or checks from unapproved prepaid medical care organizations and to refuse to give patients of such organizations itemized statements to enable the patients to be reimbursed."

With respect to proposed finding Number 28, we think the proper finding should be: "Defendants have encouraged and coerced others to refuse to consult with doctors who treat members of unapproved prepaid medical care plans."

With respect to proposed finding Number 29, we think the proper finding should be: "Defendants have spread false propaganda for the purpose of discrediting prepaid medical care plans not endorsed by defendants."

With respect to proposed finding Number 30, plaintiff objects to all of that finding except that which states that Oregon Physicians Service has not, with certain exceptions, sold prepaid medical care contracts in localities where there have been local prepaid medical care plans, and the first sentence on page 8 of defendants' proposed findings. We think with respect to proposed finding Number 30, the correct finding should be: "Defendants have agreed, conspired and combined to eliminate or to limit competition between approved prepaid medical care organizations in Oregon."

3129 With respect to proposed findings Numbers 31, 32, 33, and 34, plaintiff objects to these findings on the ground that they are contrary to the facts of this case and inconsistent with any reasonable inference from such facts.

We think a proper finding in lieu of proposed finding 31 would be: "Defendants have combined, conspired, and have attempted to make hospital facilities in Oregon available only to members of the defendant Oregon State Medical Society or its component county medical societies and to restrict qualified doctors in their use of hospital facilities.

We think a proper finding in lieu of proposed finding 32 would be: Defendants have prevented and hindered prepaid medical care organizations from entering into and expanding their business in Oregon.

We think a proper finding in lieu of proposed finding 33 would be as proposed but in the affirmative rather than in the negative.

We think a proper finding in lieu of proposed finding 34 would be: Non-membership in defendant societies has

a substantial effect on the ability of a doctor to practice medicine in Oregon and on his use of hospital facilities and appointment to the staff of a hospital.

With respect to proposed finding Number 35, defendants ask the Court to take judicial notice that there are many insurance companies within Oregon selling prepaid medical care plans in the form of indemnity insurance. We think that the Court should delete this proposed finding entirely. There was no proof in this case as to whether there were indemnity prepaid medical care insurance companies doing business in Oregon, with the possible exception of the Weston Company. We do not see how this Court can make a finding that there are many such companies in Ore-
3130 gon.

With respect to proposed finding Number 36, this proposed finding should not be made, because not only is it inconsistent with the facts in this case, but it puts the Court in the position of deciding whether one kind of prepaid medical care is better than another kind of prepaid medical care.

With respect to proposed findings Numbers 37, 38, and 39, plaintiff objects to these findings but believes that they conform to the statements made by the Court in its decision.

We think a proper finding in lieu of proposed finding 37 would be: Defendants have intended to and have restrained and monopolized the business of furnishing prepaid medical care.

We think a proper finding in lieu of proposed findings 38 and 39 would be: There has been a conspiracy during all of the time alleged in the complaint up to and including the time of the trial.

Plaintiff objects to proposed finding Number 40 but believes that it conforms to the Court's decision.

We think a proper finding in lieu of proposed finding 40 would be: Defendant Oregon Physicians Service and affiliated county and regional organizations have conducted their business outside the regular limits of competitive business practice.

With respect to proposed findings 41, 42, and 43, we believe that they are more properly conclusions of law, but whether they are regarded as findings or conclusions, we would object to them as being contrary to the facts of this case and contrary to law.

We think a proper conclusion in lieu of proposed finding 41 would be: The economic aspects of the practice of medicine as conducted within the State of Oregon by doctors

of Oregon, including defendants, are within the meaning of the Sherman Act.

We think a proper conclusion in lieu of proposed finding 42 would be: Prepaid medical care business, whether conducted by doctors or others, is within the Sherman Act, as is the sale of medical services in connection with such business.

3131 We think that a proper conclusion in lieu of proposed finding 43 would be: The restraints of trade effected by the defendants are unreasonable.

With respect to proposed finding Number 44, the defendants would, contrary to the Court's decision, have the Court make no finding of fact with respect to fee fixing. They say that no charge of fee fixing is contained in the complaint, and that the question of fee fixing has become academic because the case revolves around the legitimacy of the operations of the doctors in competition with privately owned plans.

Taking up first the claim that no finding should be made because no charge of fee fixing is contained in the complaint, we may state first that the complaint charges monopoly and restraint in the prepaid medical care field, and, of course, under the decisions fee fixing (aside from the question whether doctors' fee fixing is exempt from the Sherman Act) is an illegal means of such restraint and monopoly. Again, in the Second Supplement to Plaintiff's More Definite Statement, filed October 6, 1949, fee fixing is expressly charged. In the opening statement of Government's counsel, fee fixing is expressly referred to: So also plaintiff's argument after plaintiff rested. Fee fixing is also referred to in the trial brief filed by the Government prior to the trial, as well as at some length in the brief filed by the Government after the trial. The pretrial exhibits turned over to the defendants' counsel contained a number of documents going to the question of fee fixing. The Court itself, during the trial, asked a witness questions concerning the fixing of fees, and engaged in a discussion with counsel for plaintiff on this subject (Tr. 828-29, 987-89). Defendants' counsel on several occasions during the trial argued the question of legality of fixing fees (Tr. 1133-34, 1153-54). At no time did the defendants' counsel make an objection such as he is now making. Because of the

3132 acceptance of this issue by the parties and the Court and the absence of any element of surprise with respect to it, Government's counsel did not deem it necessary to make a *pro forma* motion at the end of the trial to amend

the complaint to conform the evidence. If any such motion be deemed necessary, we would ask the Court to regard this as a motion to reopen the case for the sole purpose of so moving. However, as stated, we do not believe such motion necessary. Since this case, as repeatedly cited, is broader than the question of defendants' actions with respect to commercial hospital associations, to wit monopoly and restraint of prepaid medical care, fee fixing is, of course, relevant. We think, therefore, that although we disagree with the Court's approach to the problem of fee fixing, as stated in its decision, findings of fact with respect to that issue should not be omitted because of the reasons stated by the defendants:

With respect to proposed finding Number 45, plaintiff objects on the ground that it is contrary to the facts of this case and to any reasonable inference arising from such facts.

We think a proper finding in lieu of proposed finding 45 would be: One of the primary purposes for which Oregon Physicians Service was formed was to eliminate and restrain unapproved prepaid medical care organizations already in the field.

With respect to proposed finding Number 46, we think the first sentence is somewhat inaccurate because there was considerable proof that some doctors refused to accept checks, some doctors refused to accept tickets, some doctors did accept payment from the prepaid medical care plans but not "tickets". Plaintiff objects to all the rest of proposed finding Number 46 on the ground that it is contrary to the facts and inconsistent with any reasonable inference therefrom.

We think a proper finding in lieu of proposed finding 46 would be: Defendants have combined, conspired, and taken concerted action to boycott unapproved hospital associations, using among other means refusal to accept tickets or checks of such associations and to give itemized
3133 statements to members of such organization, and that such boycott has continued up to and including the time of the trial.

With respect to proposed findings Numbers 47 and 48, plaintiff objects to these findings on the ground that they are contrary to the facts and inconsistent with any reasonable inference therefrom.

We think a proper finding in lieu of proposed finding 48 would be: The defendants have restrained hospitals and hospital services and the opportunities of doctors or patients to obtain hospital services.

With respect to proposed finding Number 49, the statement is made that the plaintiff concedes that a greater portion of the population of the State of Oregon is covered by prepaid medical care plans than that of any other state. This is based upon a statement in the Court's decision which refers to page 455 of the Government's brief. The Court will note that that reference is part of a quotation from a statement of a managing officer of OPS who resigned in 1945. Even assuming that the Government accepted such statement, that statement would apply only as of that time. Furthermore, that statement is immediately followed by the statement that "family benefits for Oregonians is practically non-existent." We think, therefore, that no such finding should be made, but if it is made, it should also include the latter statement. We do not believe the first sentence of proposed finding Number 49 is relevant.

With respect to proposed finding Number 50, we object to this finding on the ground that it is contrary to the facts and inconsistent with any reasonable inference therefrom.

We think a proper finding in lieu of proposed finding 50 would be: Throughout the period of this conspiracy, a number of doctors have been denied membership in one or more of the defendant medical societies because of their connection with private hospital associations.

3134 We object to proposed conclusions of law Numbers 1, 2, and 3, on the ground that they are not founded in fact or in law.

Proposed conclusion Number 5 follows the statement made by this Court in its decision, but we would respectfully ask the Court to replace it by a conclusion that interstate commerce and trade are involved in this case and that activities of Oregon prepaid medical care organizations affect and involve interstate commerce and trade. This conclusion would naturally follow from the proposed findings of the defendants Numbers 14-18. If the Court made this conclusion, it would narrow the issues that the Supreme Court would have to determine upon any appeal in this case, and would also obviate the necessity of printing up many documents, including FBI work sheets, to show interstate commerce and trade. We respectfully ask, therefore, that the Court make the conclusion we have requested.

We respectfully ask the Court to make the following findings with respect to membership in the defendant medical societies.

1. In 1936, at least 61.1% of the licensed physicians in Oregon were members of defendant Oregon State Medical Society. In 1946, at least 70.7% of the licensed physicians in Oregon were members of the defendant Oregon State Medical Society. In 1948 and 1949 approximately 80% of doctors were members of defendant Oregon State Medical Society. In only one year since January 1, 1936 has the percentage been less than 60%. In at least one year it has been as high as 96% and in no year since 1941 has it been less than 70%. (This finding would be based upon the following evidence: Exhibit 1942; report of February 1948; Pretrial Proceedings of May 2, 1949, page 58; of September 7-12, 1949, page 96; Defendant Oregon State Medical Society's Answer to Interrogatory III; Exs. 287 p. 936, 2191, 2131, 2132).

2. Columbia County Medical Society knew of no doctors or members of hospital staff not members of their society. (Columbia County Medical Society Answer to Interrogatory XIII)

3135 Only one or two doctors in Clackamas County have not belonged to the Physicians Association of Clackamas County (Tr. 1420). All the doctors in Douglas County have been members of the Douglas County Medical Society (Doug. County Med. Soc. Ans. to Interr. XIII). With the exception of a couple of doctors whose licenses were taken away, one doctor who resigned, and one doctor not residing in Jackson County, all doctors practicing in the County were members of Jackson County Medical Society (Jac. Co. Med. Soc. Ans. to Interr. 13). The only doctors practicing within Marion and Polk Counties who have not been members of the defendant society have been doctors employed by the Oregon State Hospital (M-P Ans. to Interr. XIII). In 1949 the Multnomah County Medical Society had at least 600 members (Ex. 2131, Pretrial Proceedings of May 2, 1949, Tr. 581).

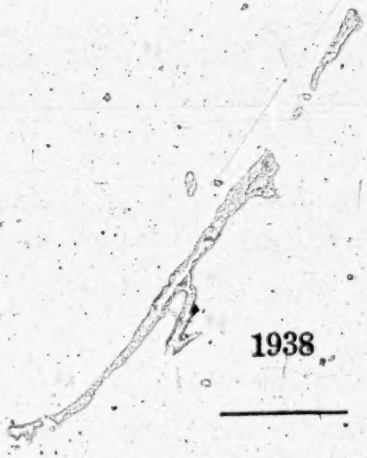
Respectfully submitted,

PHILIP MARCUS
Attorney for the plaintiff

Plaintiff's Exhibit 1

3136

CONSTITUTION AND BY-LAWS OF THE AMERICAN MEDICAL ASSOCIATION



1938

3163

MEMBERSHIP AND FELLOWSHIP

CHAPTER XII.—MEMBERSHIP AND FELLOWSHIP

SECTION 1. TENURE OF MEMBERSHIP.—Membership in th Association shall continue only so long as the individual a member of a component society of the constituent associ tion through which he holds membership.

• • • • •

Plaintiff's Exhibit 2

3195

AMERICAN MEDICAL ASSOCIATION

Founded 1847

HANDBOOK
1948

American Medical Association
535 N. Dearborn Street
Chicago 10, Illinois

3233

DIRECTORY AND BIOGRAPHICAL DEPARTMENT

Frank V. Cargill, Editor of Directory

In 1905, at Portland, Oregon, the House of Delegates of the American Medical Association proposed the establishment of a biographical record of physicians and the publishing of a medical directory. The First Edition of the *American Medical Directory* was issued in 1906. Subsequent editions have been published at intervals of approximately two years, except immediately after World Wars I and II. The 17th Edition was issued in 1942, and plans are now being made to complete the 18th Edition by January 1949.

The Directory files include some 500,000 cards containing such information on physicians as: Date of birth, medical school and year of graduation, state and year of license, internships and residencies, professorships, medical society affiliations, certifications by specialty boards, specialty practiced, residence and office addresses. This information is kept in a perpetual file so that it may always be available. The Department also maintains the Personal File, made up of letters from official sources, newspaper and journal clippings, which are used in preparing biographic items and obituaries, and in answering inquiries of a professional nature.

A supplementary service to the Directory is issued twice a month listing the names of new physicians, changes of ad-

dress, names of physicians who have died, and names of physicians entering or leaving the Army of the U. S. and the U. S. Naval Reserve. The service is available on a subscription and royalty fee basis to commercial firms, publishers, insurance companies, and others who use the Directory to circularize the medical profession.

CONSULT THE DEPARTMENT FOR INFORMATION ON THE FOLLOWING:

PROFESSIONAL STATUS OF PHYSICIANS
LOCATION OF AN INDIVIDUAL PHYSICIAN
BIOGRAPHICAL DATA ON PHYSICIANS
AMERICAN MEDICAL DIRECTORY
DIRECTORY REPORT SERVICE

3239 PRINCIPLES OF MEDICAL ETHICS OF THE AMERICAN MEDICAL ASSOCIATION

* * * * *

ARTICLE VI.—COMPENSATION

* * * * *
* * * * *

3246

CONTRACT PRACTICE

SEC. 3.—By the term "contract practice" as applied to medicine is meant the carrying out of an agreement between a physician or a group of physicians, as principals or agents, and a corporation, organization, political subdivision or individual, to furnish partial or full medical services to a group or class of individuals on the basis of a fee schedule, or for a salary or a fixed rate per capita.

Contract practice *per se* is not unethical. However, certain features or conditions if present make a contract unethical, among which are: 1. When there is solicitation of patients, directly or indirectly. 2. When there is underbidding to secure the contract. 3. When the compensation is inadequate to assure good medical service. 4. When there is interference with reasonable competition in a community. 5. When free choice of a physician is prevented. 6. When the conditions of employment make it impossible to render adequate service to the patients. 7. When the contract because of any of its provisions or practical results is con-

trary to sound public policy. The phrase "free choice of physician," as applied to contract practice, is defined to mean that degree of freedom in choosing a physician which can be exercised under usual conditions of employment between patient and physician when no third party has a valid interest or intervenes. The interjection of a third party who has a valid interest or who intervenes does not *per se* cause a contract to be unethical. A "valid interest" is one where, by law or necessity, a third party is legally responsible either for cost of care or for indemnity. "Intervention" is the voluntary assumption of partial or full financial responsibility for medical care. Intervention shall not proscribe endeavor by component or constituent medical societies to maintain high quality of service rendered by members serving under approved sickness service agreements between such societies and governmental boards or bureaus and approved by the respective societies.

3247

Each contract should be considered on its own merits and in the light of surrounding conditions. Judgment should not be obscured by immediate, temporary or local results. The decision as to its ethical or unethical nature must be based on the ultimate effect for good or ill on the people as a whole.

• • • • •

DIRECT PROFIT TO LAY GROUPS

SEC. 5.—It is unprofessional for a physician to dispose of his professional attainments or services to any lay body, organization, group or individual, by whatever name called, or however organized, under terms or conditions which permit a direct profit from the fees, salary or compensation received to accrue to the lay body or individual employing him. Such a procedure is beneath the dignity of professional practice, is unfair competition with the profession at large, is harmful alike to the profession of medicine and the welfare of the people, and is against sound public policy.

Plaintiff's Exhibit 3

3254 VOLUNTARY
PREPAYMENT
MEDICAL CARE
PLANS
(Emblem)
1947
Revised

Council on Medical Service—
American Medical Association

3315 OREGON PHYSICIANS SERVICE
471 Pittock Block, Portland 5, Oregon (Emblem)
General Manager—Willard C. Marshall.

ORGANIZATION: Organized in December 1941, as a prepayment medical care plan under the state laws. Prepayment medical care plans organized by county medical societies had been operating in 18 counties since 1930. Four county plans continue to operate as local plans, but are affiliated with the state plan. These four local plans are:

1. Pacific Hospital Association, Eugene, Oregon
2. Klamath Medical Service, Klamath Falls, Oregon
3. Coos Bays Hospital Assn., Marshfield, Oregon
4. Clackamas County Physicians Assn., Oregon City, Oregon

GOVERNING BODY: A Board of 11 trustees, all physicians, who are selected to represent the major areas of the state.

MEDICAL SOCIETY APPROVAL: The Oregon State Medical Society and the county medical societies.

AREA COVERED: State-wide.

TYPE OF CONTRACT: Service.

INCOME LIMITS: None.

ENROLLMENT: Number enrolled in Oregon Physicians Service and four local plans as of December 31, 1946:

Total	59,338

(Dependent coverage starting in 1946)
Eligibility requirements: Employed groups (including dependents, beginning in 1946.)

BENEFITS: 1. General surgical services—in office, home or hospital.

2. Medical care—in office, home or hospital for a period of one year.

3. Other services—specialists services, special nurses up to 30 days, x-ray services, physical therapy and ambulance service. Medicines for hospitalized patients.

4. Hospital ward service—up to six months.

5. Dental services—extraction of teeth and treatment of acute gum trouble.

6. One physical examination and prophylaxis for control of communicable diseases.

EXCLUSIONS: The usual exclusions plus known pre-existing conditions, maternity care or conditions due to pregnancy. (Maternity care furnished in new dependent contracts.)

WAITING PERIODS: None.

MONTHLY PREMIUMS: Subscriber $3.00
(Surgical and hospital service for dependents started in 1946—no report made.)

BLUE CROSS RELATIONSHIP: None.

CHANGE OF EMPLOYMENT: Provision is made for retaining membership when leaving original enrollment group.

INSIGNIA USED: Caducens.

3316 NORTHWEST HOSPITAL SERVICE PLAN
1220 S. W. Morrison Street, Portland 5, Oregon
Executive Director—Frank F. Dickson.

ORGANIZATION: Organized in 1942 as a Hospital Service plan under the provisions of the Oregon Hospital Association Act of 1917 as amended in 1930. Medical-

surgical-obstetrical endorsement introduced in July, 1946.

GOVERNING BODY: A Board of 14 Trustees currently composed of 9 Hospital representatives, 3 doctors of medicine, and 2 representing the public.

MEDICAL SOCIETY APPROVAL: None.

AREA COVERED: State-wide.

TYPE OF CONTRACT: Cash indemnity

INCOME LIMITS: None.

ENROLLMENT: Number enrolled as of December 31, 1946:

Subscribers	2,264
Dependents	2,477
Total	4,741

Eligibility requirements: Enrollment open to employed groups, community groups, and individuals.

BENEFITS: 1. General surgical services—in hospital according to surgical benefit fee schedule.

2. Medical care—when hospitalized for non-surgical cases an allowance of up to $3.00 per day for first 21 days and $1.50 per day for an additional 180 days during any contract year.
3. Other services—none.

EXCLUSIONS: The usual exclusions plus pre-existing conditions.

WAITING PERIODS: Maternity, 10 months; tonsillectomy or adenoidectomy, 6 months.

MONTHLY PREMIUMS: Group

Subscriber	$1.00
Subscriber and spouse	2.00
Family	3.00

BLUE CROSS RELATIONSHIP: This is a Blue Cross Plan and the Medical-Surgical-Obstetrical benefits are added to the hospital contract by endorsement.

CHANGE OF EMPLOYMENT: Provision is made for continuing membership when leaving original enrollment group.

INSIGNIA USED: As this coverage is provided by endorsement to a Blue Cross contract, no special insignia is used.

Plaintiff's Exhibit 4

3346 Oregon State Medical Society

CONSTITUTION

AND

BY-LAWS

Adopted September 9, 1939

By-Laws Amended as of October 1946

3347 Oregon State Medical Society

CONSTITUTION AND BY-LAWS

CONSTITUTION

ARTICLE I. NAME OF THE SOCIETY

The name of this organization shall be the Oregon State Medical Society.

ARTICLE II. PURPOSES OF THE SOCIETY

The purposes of this society shall be: (a) to federate and bring into one compact organization the entire ethical medical profession of the State of Oregon; (b) to unite with similar organizations in other states and the territories of the United States to form the American Medical Association; (c) to promote the science and art of medicine, advance medical education and knowledge, and promote the welfare of the medical profession.

ARTICLE III. COMPONENT SOCIETIES

Section 1. Component societies shall consist of those county or district societies which hold unrevoked charters from this society.

Section 2. Only one component society shall be chartered in any one county of the state. If the Council or the House of Delegates deems it advisable, a charter may be issued to a district society consisting of two or more counties which have no county medical society.

Section 3. Charters shall be issued or revoked by the council or the House of Delegates of this Society pursuant to the by-laws of this Society.

ARTICLE IV. Composition of the Society

Section 1. This society shall consist of active, junior, interne, life, associate, and honorary members as defined and limited in this constitution or by the by-laws of this society.

Section 2. Members of any class may be censured, suspended or expelled from this society in the manner provided by the by-laws. A member duly suspended or expelled from his local component medical society shall also be considered suspended or expelled from this society, unless the council of this society or the appropriate body of the American Medical Association shall determine that such a member shall be reinstated to membership.

Section 3. The by-laws may also provide for penalties because of non-payment of dues or assessments.

ARTICLE V. Officers

Section 1. The officers of this society shall be president, president-elect, three vice-presidents, secretary, treasurer and ten councilors.

Section 2. The officers, except the president and the councilors, shall be elected for one year at the annual meeting of the society.

3348 Section 2. Councilors shall be elected for three years. One-third, or as many as may be necessary to fill our vacancies in the council shall be elected each year.

Section. 3. These officers shall serve until their successors are elected and take office; provided that the president-elect shall succeed to the presidency at the close of the next annual session after his election; provided, further, that the Council may fill any vacancy in any of the above named offices to serve out the unexpired term of such office, unless otherwise provided by this constitution or the by-laws of this society.

ARTICLE VI. House of Delegates

Section 1. The House of Delegates shall consist of (a) delegates elected by the component county and district societies under the provisions of the

by-laws of this society and the constitution and by-laws of such county and district societies; (b) the officers of this Society enumerated in Article V. Section 1 of this constitution; (c) any officer of or delegate to the American Medical Association who is a member of this society.

Section 2. The House of Delegates shall hold an annual meeting and may hold special meetings.

Section 3. Special meetings of the House of Delegates may be called in the manner provided by the by-laws of this society.

Section 4. The by-laws of this society may provide for the time of the annual session of the House of Delegates and the manner of conducting such session.

Section 5. The House of Delegates shall be the legislative body of this society, and at the annual session thereof shall nominate the officers provided for under Article V, Section 1, of this Constitution.

ARTICLE VII. Council

Section 1. The Council shall consist of ten councilors, the other officers of the society, the retiring president, and any officer of or delegate to the American Medical Association who is a member of this society.

Section 2. The Council shall be the executive body of this society and act as the Board of Censors.

Section 3. The Council shall have the full authority and power of the House of Delegates between the sessions of said House, unless a referendum is called under the constitution or by-laws of this Society, or such authority and power be specifically reserved to the House of Delegates or society.

ARTICLE VIII. Sections And District Societies

3349 The House of Delegates or the Council may provide for a division of the scientific work of the society into appropriate sections and for the organization of such district societies as will promote the scientific interests of the profession. The membership of such district society shall

be composed exclusively of members of local county or district component societies.

ARTICLE IX. Sessions And Meetings

Section 1. The Society shall hold an annual meeting at a time and place to be fixed by the House of Delegates or the Council.

Section 2. Special meetings of the Society may be called in the manner provided in the by-laws of this Society.

ARTICLE X. Funds, Expenses, Assessments And Property

Section 1. Funds shall be raised by an equal annual per capita assessment of dues upon the various classes of membership as provided in the by-laws of this Society. Funds may also be raised by voluntary contribution, from the Society's publications, or in any other manner provided by the House of Delegates or the Council.

Section 2. All funds received by the Society shall be deposited with a depository selected by the Council. Funds may be appropriated by the House of Delegates or the Council to defray the expenses of the Society.

Section 3. No person other than an active member or life members in good standing shall have any interest in the property or assets of this society. If any such member shall die, resign, be suspended, expelled or otherwise cease to be an active member or life member of the Society, all of his interest in and to all the property of the Society shall cease, and such event shall operate as a release and assignment to the Society of all right, title and interest of such member in and to all the property of the Society.

ARTICLE XI. Referendum

Section 1. The House of Delegates in any meeting or the Council may order a referendum on any question of policy which may come before said bodies, in the manner provided by this constitution or the by-laws of this Society.

Section 2. Where the Council or the House of Delegates has power to decide a question under this constitution and the by-laws of the Society, the action of the Council or the House of Delegates shall be valid pending final determination of the referendum, unless the resolution or motion providing for such referendum shall specifically suspend such power of the Council of the House of Delegates pending action of the Society on the general referendum.

ARTICLE XII.

The Principles of Medical Ethics of the American Medical Association and the rules of professional conduct adopted by the House of Delegates of that Association are hereby incorporated herein the same as though set out in full, and they shall be the code and standard of conduct of this Society.

3350 ARTICLE XIII. AMENDMENTS

At any regular or special meeting of the House of Delegates, amendments to this constitution may be made by a 2/3 vote of the members of the House of Delegates present at said meeting, provided that at least a majority of the Delegates regularly elected by the component societies are present: provided further that, (a) the Secretary of the Society shall have mailed to all the members of the House of Delegates, a written copy of such proposed amendment more than 30 days prior to such meeting of the House of Delegates, or (b) that such proposed amendment shall have been approved by the Council at least 30 days prior to the meeting at which the amendment is to be considered, or (c) unanimous consent of all delegates present at said meeting is obtained.

BY-LAWS

CHAPTER I—MEMBERSHIP

Section 1. (a) Active members shall be members in good standing of a component county of district society who are not delinquent in dues to this Society and who are duly licensed to practice medicine and surgery by the Board of Medical Examiners of the State of Oregon. (As amended 1940)

(b) Active members shall have the right to vote, hold office and all other privileges of membership in this Society.

(c) Active members who move to another state or territory of the United States may maintain their membership in this Society for one year after their removal by paying the regular dues but such members shall not be entitled to vote or hold office.

Section 2. (a) Junior members shall be physicians who are duly licensed to practice medicine and surgery by the Board of Medical Examiners of the State of Oregon and who shall have joined their respective component societies in this state within one year after completion of hospital apprenticeship. (As amended 1940)

(b) Junior members shall be entitled to vote but they shall not be eligible to hold elective office.

(c) Such membership shall automatically terminate three years from the date of acceptance, at which time such member shall automatically become an active member.

Section 3. (a) Interne members shall be such physicians as are interne members in good standing of component societies of this Society.

(b) Interne members shall not be entitled to vote, hold office or participate in the scientific proceedings of this Society, except by invitation.

(c) Interne membership in this Society shall terminate automatically with the termination of such membership in the Member's component Society.

Section 4. (a) Life members shall be physicians who have been active members in good standing of this Society for thirty years; provided that no physician shall be entitled to life membership until he has reached the age of 65 years, except under unusual circumstances.

8351 (b) Such members shall be entitled to all priviliges of active membership.

(c) Such membership may be granted by the Council.

Section 5. (a) Associate members shall be:

(1) Physicians who are full-time employees of any governmental agency and who receive no compensation from the private practice of medicine; or

(2) physicians engaged in full-time scientific work in connection with a reputable institution of learning and who receive no compensation from the private practice of medicine; or

(3) physicians who are located in foreign countries and engaged in medical missionary or similar educational or philanthropic labors; or

(4) Representative teachers and students of sciences allied to medicine.

(b) Such members shall not be entitled to vote or hold elective office in this Society. (as amended 1940)

Section 6. (a) Honorary members shall be:

(1) Physicians who have distinguished themselves in any department of medicine or surgery; or

(2) physicians whose contributions to scientific literature have met with the approbation of the medical profession; or

(3) members of other scientific, literary or welfare organizations whose interests, researches or literary contributions have assisted in the advancement of the science of medicine or surgery; or

(4) Persons who have performed outstanding service on behalf of scientific medicine.

(b) Such members shall not be entitled to vote or hold any elective office, and they shall not exceed 10% of the active membership.

Section 7. (a) Life, associate or honorary membership may be obtained in the following manner;

(1) By the presentation of evidence of qualification for one of such memberships to the Council;

(2) The Council shall review the qualifications of such person for such membership and award or refuse to award such memberships to a person eligible hereunder.

Section 8. Nothing in the constitution or by-laws of this Society shall be construed to give the benefits of membership to; (a) a physician who is not in good standing in his component society or this society because of non-payment of dues, or (b) who is under a sentence of suspension or expulsion from his component society, this Society, or the American Medical Association, or (c) whose membership in his component society, this Society, or the American Medical Association has been terminated or suspended in any manner pursuant to the constitution or by-laws of said societies, or (d) a person whose license to practice medicine and surgery has been revoked.

3352 Section 9. Nothing in the constitution or by-laws of this Society shall be construed to prevent the appointment and service of members of any class on committees.

Section 10. Application for any class of membership, or acceptance of membership, or user of any privilege of membership in this Society, or any of its component societies, shall be deemed and taken to be an agreement on the part of the member to be bound by the constitution and the by-laws of this Society, together with regularly adopted amendments thereto, and the actions of the Society or officers thereof taken pursuant to such constitution and by-laws, exclusive of any other remedy.

CHAPTER II—Dues And Delinquency

Section 1. The annual dues of the various classes of members shall be:

(a)	Active members	$40.00
(b)	Junior members	15.00
(c)	Associate members	15.00
(d)	Life members	Annual subscription charge of "Northwest Medicine"

(e) Interne and honorary members shall not be required to pay dues.

(f) The Council may remit dues of members under special circumstances. (as amended 1946)

Section 2. (a) Dues shall be payable on January 1st of each year. A member is in good standing, unless otherwise disqualified, whose dues and assessments are paid by July 1st of the current year. When dues or assessments are unpaid by that time, members shall be automatically suspended. If dues or assessments remain unpaid on December 31st of the current year, membership shall be automatically terminated.

(b) A member suspended because of non-payment of dues or assessments shall be automatically reinstated to membership upon payment of sums for which he is delinquent and current year's dues and assessments, providing no other cause for excluding him exists.

(c) A member whose membership has become automatically terminated because of nonpayment of dues or assessments may apply to this Society for readmission in the same classification which he formally enjoyed, or that changed conditions warrant, within one year after such automatic termination. Such application shall be accompanied with the dues and assessments unpaid and current year's dues and assessments. The Council shall consider such application, and, if such person is a member in good standing of his component society and there is no other cause for excluding him, may reinstate him to membership.

3353 Section 3. It shall be the duty of the secretaries of component societies to make reports on July 1st and January 1st of each year, and any other time required by the Council, containing a list of members in good standing of such societies.

Section 4. Members of component societies who fail to pay dues or assessments to this Society shall be suspended from, or membership automatically terminated, in the component society at the same time as they are suspended from or their membership is terminated, in this Society.

CHAPTER III—COMPONENT SOCIETIES

Section 1. Charters shall be issued to component societies or approval of the Council or House of Delegates, and shall be signed by the President and Secretary of this Society. The charter of a component society may be revoked by a two-thirds vote of the Council or House of Delegates.

Section 2. The constitution and by-laws of component societies chartered hereafter shall provide that the constitution and by-laws of this Society shall bind such societies, and that no constitution or by-laws shall be enacted contrary to those of this Society. As to component societies now in existence, user of privileges granted members by the constitution and by-laws of this Society shall constitute an agreement to be so bound.

Section. 3. The Council shall revoke the charter of any component society when less than two-thirds of its members are members in good standing of this Society. Unless two-thirds of the members of a component society are members in good standing of this Society, none of its members shall be permitted to take any part in the meetings of this Society, nor shall delegates from such society take any part in the proceedings of the House of Delegates of this Society.

Section 4. The charter of a component Society may be revoked by the Council of House of Delegates upon (a) failure to perform the duties required

to be performed by such societies by the constitution or by-laws of this Society; or (b) actions in conflict with the spirit and letter of the constitution and by-laws of this Society, or (c) failure to comply with the policy of the House of Delegates or Council of this Society; or (d) failure to require its members to abide by the constitution and by-laws of this Society; or (e) failure to enforce the Principles of Medical Ethics of the American Medical Association.

Section 5. Each component society shall judge the qualifications of its own members, subject to the provisions of the constitution and by-laws of this Society, and action taken pursuant thereto. Any reputable, regularly licensed and registered physician who is practicing in accordance with the Principles of Medical Ethics of the American Medical Association may apply for membership. Any physician who fulfills the above requirements, and is refused membership in a component society, may appeal to the Council of this Society in the same manner provided by Chapter X, Section 3 herein.

3354 The Council shall consider such appeal in the same manner as provided in said Chapter X, Section 3. The Council may dismiss said appeal, or order that such physician be admitted to membership in such society upon such terms or conditions as may seem advisable to said Council. Action of the Council shall be final, and shall be followed by such component society, unless the appropriate body of the American Medical Association shall reverse the Council.

Section 6. When a member in good standing in a component society moves to another county or district in this state, he shall be given a written certificate of these facts by the secretary of his society, without cost, for transmission to the secretary of the society in the county or district to which he moves, such member shall be considered to be in good standing in the county or district society from which he was certified and

in the state society to the end of the period (respectively) for which his dues have been paid.

Section 7. The secretary of each component society shall keep a roster of its members and of the non-affiliated, registered physicians of the county or district, on which shall be shown the full name, address, school and date of graduation, date of license to practice in this state and such other information as may be deemed necessary. In keeping such roster the component society's secretary shall note, and at once notify the secretary of this Society of, any changes in the personnel of the profession, by death; by resignation, or by removal to or from the county, and in making his annual report he shall endeavor to account for every physician who has lived in the county during the year. The secretary of each component society shall make a monthly report to the secretary of this Society upon such forms and including such subjects as are herein provided, and as the Council may authorize.

CHAPTER IV—House of Delegates

Section 1. At some meeting held at least sixty days prior to the annual session of this Society, each component society shall select such delegates and alternates to represent it in the House of Delegates as it shall be entitled to under these by-laws. At least thirty days prior to such annual session the secretary of such society shall send a list of such delegates and alternates to the secretary of this Society. Each such delegate and alternate shall hold office until his successor is selected.

Section 2. Each opponent society shall be entitled to send one delegate and one alternate for every twenty-five active members, or major fraction thereof, in good standing in this Society, who are also members in good standing of such society, as of the date of meeting to select such delegates provided, each component society shall be entitled to at least one delegate and al-

ternate; and provided, further, such society shall be not otherwise disqualified hereunder.

3355 Section 3. If a sufficient number of delegates or alternates from any component society are not present at a meeting of the House of Delegates to make up the number permitted such society, the House may elect acting delegates from among the active members of such society present at such meeting, provided such members are otherwise qualified to act as delegates. Such acting delegates shall have all the rights and privileges of regular delegates at the meeting at which they are elected, but only in the absence of the regular or alternate delegates.

Section 4. The House of Delegates shall meet annually at the time and place of the annual session of this Society. The Council may order a meeting of the House of Delegates in advance of said annual session, by giving the same notice as required for a special meeting of the House of Delegates. The House of Delegates may also continue its annual meeting from time to time.

Section 5. The Council, the Society, when regularly assembled, or the House of Delegates at the annual or a special meeting, may order that a special meeting of the House of Delegates be held, not earlier than twenty days after the meeting ordering such special meeting. In such event the secretary shall mail a written notice to the delegates, alternates and other members of the House of Delegates, stating the time, place and purpose of said meeting, at least ten days before the date thereof. The House of Delegates shall have the same powers and privileges in such special meeting as in an annual meeting, unless some power is given by the constitution and by-laws to be exercised only at the annual meeting.

Section 6. At meetings of the House of Delegates, all delegates, alternates and other members of the House of Delegates shall register with the secretary. A majority of those registered shall

constitute a quorum. A majority of such quorum shall be sufficient to decide any question the House of Delegates is empowered to decide, unless otherwise provided by law, the constitution, or by-laws of this Society.

Section 7. The president or presiding officer shall appoint the following committees from the House of Delegates to which reports and resolutions shall be referred:

(1) Committee on Credentials;

(2) Reference Committee on Reports of Committees and Officers;

(3) Committee on Resolutions;

(4) Committee on New Business.

Section 8. The president shall also appoint such other committees as may be advisable, unless otherwise provided by motion, or the constitution and by-laws of this Society.

Section 9. The House of Delegates shall elect representatives to the House of Delegates of the American Medical Association in number and procedure to conform to the constitution and by-laws of that Association.

3356 Section 10. The House of Delegates shall present a summary of its proceedings to the general meeting on the last day of each annual session and may publish the same in the transactions.

CHAPTER V—The Council

Section 1. The Council shall be the Board of Censors of the Society. All questions of an ethical nature brought before the House of Delegates or the general meeting of the Society shall be referred to the Council without discussion. It shall hear and decide all questions of discipline of component societies, members of this Society, and appeals from decisions of component societies.

Section 2. In sparsely settled sections the Council shall have authority to organize the Physicians of two or more counties into district societies, and

these societies, when organized and chartered, shall be entitled to all rights and privileges provided for component societies until such counties shall be organized separately.

Section 3. In addition to the other powers granted, the Council shall:

(a) Have charge of the business affairs of the Society;

(b) Employ an executive secretary, attorney, accountant, and such other employees or assistance as may appear necessary, and fix or agree upon their compensation;

(c) Provide adequate headquarters for the Society;

(d) Appoint committees and designate their powers and duties.

Section 4. (a) The Council shall hold monthly meetings at such times and places as shall be decided by the Council;

(b) Special meetings may be called at any time by the president, or shall be called on written petition of three members of the Council;

(c) Notice of such special meetings shall be mailed to each member of the Council at least three days prior thereto; the notice shall state the time and place of such meeting, and the general business to come before the Council.

Section 5. A majority of the members of the Council shall constitute a quorum. A majority of the Council present, provided a quorum is in attendance, shall be sufficient to decide any question the Council is empowered to decide, unless otherwise provided by law, or the constitution or by-laws of this Society.

Section 6. (a) The president, first vice-president, retiring president, secretary, president-elect and three other members of the Council shall form an Executive Committee. The president-

elect shall be an exofficio member, with no power to vote.

(b) The Council shall select the three members to serve on the Executive Committee, each to serve for a period of three years, and until their successors are selected and qualified.

3357 (c) Each committee, agency or subsidiary organization seeking financial support from this Society shall present to the Executive Committee not more than 60 days after the annual session, a proposed program of activities for the ensuing year, with an estimate of the amount of money required to carry on its proposed program. The Executive Committee shall thereupon prepare a complete annual budget for the ensuing year and present the same to the Council for its consideration.

(d) The Executive Committee shall also have power to direct the activities of the headquarters office, approve the employment of personnel, approve necessary emergency expenditures, care for any other emergency which may arise during the interim between meetings of the Council, and perform such other duties as may be required of it by the Council or the House of Delegates. A report of the interim activities shall be made by the committee at the next regular meeting of the Council.

(e) A quorum of the Executive Committee shall consist of three members. A majority of such quorum shall be sufficient to take any action which the committee is qualified to take. (As amended 1940)

CHAPTER VI—Officers—Election

Section 1. At the annual session the House of Delegates shall elect a nominating committee of not more than five, which shall report its recommendations, for officers and councilors to be elected at that session. The House of Delegates shall act upon this report, and report nominations to the Society.

Section 2. The report of the House of Delegates and the election of officers shall be the first order of

business on the morning of the last day of the general session, after the reading of the minutes. Additional nominations may be made from the floor by members in good standing of this Society.

Section 3. Election shall be by individual secret ballot. A majority of votes cast shall be necessary to elect. In case no nominee receives a majority of the votes on the first ballot, the nominee receiving the lowest number of votes shall be dropped and a new ballot taken. This procedure shall be continued until one of the nominees receives a majority of the votes cast.

Section 4. The Council shall have authority to fill any vacancy in office for the unexpired term, unless otherwise provided by the constitution or by-laws of this Society.

Section 5. The state shall be divided into seven councilor districts, as follows:

District No. 1 Multnomah, Washington and Clackamas Counties;

District No. 2 Columbia, Clatsop, Tillamook and Yamhill Counties;

District No. 3 Marion, Linn, Lane, Benton, Polk, Lincoln Counties;

District No. 4 Douglas, Jackson, Josephine, Curry, Coos Counties;

District No. 5 Jefferson, Crook, Deschutes, Klamath and Lake Counties;

3358 District No. 6 Hood River, Wasco, Sherman, Gilliam and Wheeler Counties;

District No. 7 Umatilla, Harney, Morrow, Grant, Union, Wallowa, Baker, and Malheur Counties.

(b) District No. 1 shall be entitled to three councilors and the remaining six districts shall be entitled to one councilor each. There shall also be one councilor-at-large.

(c) Only duly licensed physicians in active practice, residing or practicing in a councilor district, shall be elected as councilor for that district; provided the councilor-at-large need not be from any special district.

(d) One councilor-at-large, who shall be a duly licensed woman physician in active practice, shall be elected.

Section 6. A physician must be a member in good standing of this Society and the appropriate component society to be eligible to be an officer or councilor of this Society.

CHAPTER VII—Duties of Officers

Section 1. The president shall preside at all meetings of the Society, the House of Delegates and the Council, shall appoint all committees not otherwise provided for, shall deliver an annual address at a general meeting of the annual session, shall be entitled to cast the deciding vote at any meeting in case of a tie, and shall perform such other duties as custom or parliamentary usage may require.

Section 2. The first vice-president shall assist the president in the discharge of his duties, substitute for the president when called upon to do so by the president, and have the power of the president during the president's temporary absence or disability. In the event of the resignation, death, disqualification or removal of the president, the first vice-president shall become president for the unexpired term. In such event, a vice-president to serve the first vice-president's unexpired term shall be elected at next regular meeting of the Council.

Section 3. The secretary shall attend the general meetings of the Society, the House of Delegates and the Council, and shall keep accurate minutes of their respective proceedings in separate record books. He shall superintend all ballots and shall be the custodian of all record books and papers belonging to the Society, except such as properly belong to the treasurer. He shall provide for the registration of the members and delegates at the annual session, and shall prepare and issue programs for all meetings of the Society. He shall employ such assistance as may be ordered by the Council, and shall make his annual report to the House of

Delegates at the annual meeting. As soon thereafter as may be practicable, the secretary may deposit in the archives of the Society copies of all papers read before the Society during the year, together with all records and documents of the Society in his possession. He shall have such other powers and duties as custom may dictate, or such as may be given him by the Council.

3359 Section 4. The treasurer shall deposit all funds of the Society in a national bank in Portland, Oregon, and shall keep in separate accounts the general fund and the contingent fund. He shall give bond in such amount and of such character as may be designated by the Council. He shall pay money out of the treasury of the Society upon an order signed by the president and countersigned by the secretary, or upon instructions of the Council or House of Delegates.

He shall collect all money due the Society and annually render an account of his doings. In the absence or incapacity of the treasurer, the president and the secretary shall be authorized to draw checks on the funds of this Society. The treasurer, subject to the direction and control of the House of Delegates and the Council, shall have the care and management of the financial affairs of the Society.

Section 5. The various councilors shall be responsible for the organization and efficient operation of medical societies in each county of their respective districts and securing members for this Society in such district, and shall visit the component medical societies in his district as often as may be practical.

CHAPTER VIII—COMMITTEES

Section 1. The standing committees of the Society shall be as follows:

(a) Committee on Annual Session

(b) Committee on Public Policy

(c) Committee on Publication

(d) Committee on Medical Education and Hospitals

(e) Committee on Postgraduate Education

(f) Committee on Malpractice

(g) Committee on State Industrial Affairs

(h) Committee on Charitable Medical Care

(i) Committee on Maternal Welfare

(k) Committee on Child Health

(l) Committee on Cancer Study

(m) Committee on Venereal Disease

(n) Committee on Tuberculosis

(o) Committee on Conservation of Hearing

(p) Committee on Conservation of Vision

(q) Committee on Military Affairs

(r) Committee on Veterans' Affairs

(s) Advisory Committee to the Woman's auxiliary

(t) Committee on Revision of Constitution and By-laws

Section 2. Unless otherwise provided in these by-laws, each of these committees shall consist of three members who shall serve a term of three years each. The president shall appoint one member of each of these committees, unless otherwise provided for, for a term of three years, one for a term of two years and one for a term of one year, and each until his successsor shall be appointed and qualified, and each year thereafter another member shall be appointed for three years and until a successor be appointed and qualified. Unless otherwise provided herein, committees shall act under the instructions of the House of Delegates or the Council.

3360 Section 3. The Committee on Annual Session shall consist of three members, of which the secretary of this Society shall be chairman.

The other two members shall be appointed annually by the president. This committee shall determine the character and scope of the scientific proceedings of this Society for each session. It shall prepare and issue a program announcing the order in which paters and discussions shall be presented at least thirty days previous to each annual session. It shall also arrange all other features of the annual session.

Section 4. The Committee on Public Policy shall represent the Society in obtaining and enforcing legislation in the interest of public health. The president and president-elect shall be ex-officio members of this committee.

Section 5. The Committees on publication, subject to the instructions of the House of Delegates or the Council, shall represent this Society in all matters relating to strictly scientific publications. This committee shall represent this Society on the Board of Trustees of the official journal. This committee shall consist of three members, one of whom shall be elected annually by the House of Delegates.

Section 6. The Committee on Medical Education and Hospitals subject to the instructions of the House of Delegates or the Council, shall represent this Society in all matters relating to medical education and hospitals and shall serve in this state in the capacity of the Council on Medical Education and Hospitals of the American Medical Association.

Section 7. The Committee on Postgraduate Education shall formulate and promote programs of postgraduate education for the medical profession of the state.

Section 8. The Committee on Malpractice shall have called to its attention notice of threatened or actual suits for malpractice against members of this Society. It shall investigate the medical facts surrounding the alleged malpractice to determine whether the accused member has conducted himself in accordance with local

standards of professional practice and to determine any other medical question which may arise out of its investigation. It may report its findings to the Council.

Section 9. The Committee on State Industrial Affairs, subject to the instructions of the House of Delegates or the Council, shall represent this Society in all matters relating to industrial medicine and surgery. This committee shall consist of six members. Two members shall be appointed for three years, two members for two years and two members for one year, and each year thereafter two members shall be appointed for three years and until a successor shall be appointed and qualified.

Section 10. The Committee on Charitable Medical Care, subject to the instructions of the House of Delegates or the Council, shall represent this Society in all matters relating to the medical care of the indigent and medically indigent and serve as a liaison agency between this Society and official agencies and voluntary organizations providing such care. This committee shall assist in maintaining a high quality of medical care to the indigent and medically indigent. This committee shall consist of six members. The members shall be appointed for three years, two members for two years and two members for one year, and each until his successor shall be appointed and qualified, and each year thereafter, two members shall be be appointed for three years and until a successor shall be appointed and qualified.

3361

Section 11. The Committee on Public Relations shall represent this Society in interpreting to the public the aims and accomplishments of the medical profession and in the cultivation of intelligent and friendly relationships between the public and the medical profession.

This committee shall also represent this Society in the Dissemination of health information to the public. This committee shall correlate and execute such programs as are developed by other committees of this Society.

for the education of the public in special phases of health conservation and disease prevention. The president or the committee may appoint subcommittees, if such action appears necessary to carry on more effectively the work of this committee.

Section 12. The Committee on Maternal Welfare shall further the education of the public in maternal health and serve as a liaison agency between this Society and official agencies and voluntary organizations interested in this field.

Section 13. The Committee on Child Health shall further the education of the public in child health and serve as a liaison agency between this Society and official agencies and voluntary agencies interested in this field.

Section 14. The Committee on Cancer Study shall promote the dissemination of knowledge concerning neoplasms among the medical profession. This committee shall also further the education of the public regarding cancer and serve as a liaison agency between this Society and official agencies and voluntary organizations interested in this field.

Section 15. The Committee on Venereal Diseases shall further the education of the public concerning the venereal diseases and serve as a liaison agency between this Society and official agencies and voluntary organizations interested in this field.

Section 16. The Committee on Tuberculosis shall further the education of the public concerning tuberculosis and serve as a liaison agency between this Society and official agencies and voluntary organizations interested in this field.

Section 17. The Committee on Conservation of Hearing shall further the education of the public in the conservation of hearing, and serve as a liaison agency between this Society and official agencies and voluntary organizations interested in this field.

Section 18. The Committee on Conservations of Vision shall further the education of the public in the

conservation of vision, and serve as a liason agency between this Society and official agencies and voluntary organizations interested in this field.

3362 Section 19. The Committee on Military Affairs shall represent this Society in stimulating enrollment and interest in the medical reserve corps of the military departments of the national and state governments.

Section 20. The Committee on Veterans' Affairs, subject to the instructions of the House of Delegates or the Council, shall represent this Society in all matters relating to the medical care of veterans.

Section 21. The Advisory Committee to the Woman's Auxfliary shall act in an advisory capacity in the formulation and execution of the programs and activities of the Woman's Auxiliary to this Society.

Section 22. The Committee on Revision of Constitutions and By-laws shall recommend any additions or amendments to the constitution or by-laws of this Society as shall appear necessary or desirable.

CHAPTER IX—Sessions and Meetings

Section 1. The Society shall hold an annual session at such time and place as shall be determined by the House of Delegates or the Council. Notice of the selection of the time and place of meettings shall be given to the members at least thirty days prior to such annual session.

Section 2. All registered members who are members in good standing of this Society may attend and participate in the proceedings and discussions of the general meetings.

Section 3. No address or paper presented before this Society, except those of the president and guest speakers, shall occupy more than twenty minutes in its delivery. No member shall speak more than five minutes, nor more than once on any subject, except the essayist, who may close the discussion. By unanimous consent of

the Society, an extension of time may be granted.

Section 4. All papers read before this Society shall be its property.

CHAPTER X—Disciplinary Proceedings

Section 1. The Council shall be the Board of Censors of this Society.

Section 2. (a) If a component society should neglect or fail to expel a member or take other disciplinary action when requested to do so by the Council, the Council may proceed to expel from this Society, suspend or discipline such member. Expulsion or suspension pursuant hereto shall have the effect of automatic expulsion or suspension from the component society.

(b) Before the Council shall suspend, or otherwise discipline a member pursuant to this section, the secretary shall notify such member in writing of the fact that a hearing will be held to consider such actions.

(c) Such notice shall state the time and place of the hearing and shall state in ordinary language the conduct of the accused which is the basis of the disciplinary proceedings. The notice shall be sent to the last known address of the accused by mail, or delivered personally, not less than ten days before such hearing.

3363 (d) The Council may so discipline a member for failure to observe the Principles of Medical Ethics of the American Medical Association, failure to observe the constitution and by-laws of this Society or such member's component society, or other unprofessional conduct.

(e) At any such hearing the accused may be be present in person, or represented by a member of this Society, and shall be given an opportunity to be heard and present evidence in his own behalf.

(f) At the close of said hearing, or as soon thereafter as it may reasonably do so, the Council shall consider the matter and expel, suspend, otherwise discipline, or exonerate the accused member. The secretary shall communicate the decision of the Council to the accused, and to the component society to which the accused belongs.

Section 3. (a) Any member of a component society who has been censured, suspended or expelled by his component society may appeal to the Council of this Society within thirty days after the final decision so censuring, suspending or expelling him.

(b) The member, committee or other person or agency signing the formal charges against a member of a component society may after appeal to the Council of this Society within thirty days after the final decision of the component society considering such charges.

(c) Appeal shall be perfected by filing with the secretary of this Society:

(1) A copy of the correspondence which preceded filing of formal charges, including notices of conciliatory meetings and letters of the accused, if any;

(2) a transcript of testimony taken at any conciliatory hearing, if stenographic notes were taken, together with any exhibits, documents, etc., introduced at such hearing or hearings;

(3) a copy of the formal charges;

(4) a copy of the notice of meeting;

(5) a transcript of testimony on the hearing of the forman charges, together with exhibits, documents, etc., introduced thereat;

(6) a copy of the final decision of the component society;

(7) formal written notice of appeal, stating the grounds of appeal, resume of of the evidence, resume of any new evidence relied upon by appellant, and whether or not appellant desires a hearing before the Council;

(8) any other writings pertinent to the case which, in the opinion of the appellant, would aid the Council in considering the appeal.

(d) If the accused is appealing, the component society shall be termed respondent. If the component society or other person is appealing, the accused shall be termed respondent. Respondent may also file with the secretary any evidence or papers deemed pertinent, and which are not filed by appellant.

3364 (e) The Council shall consider such appeal at a subsequent meeting. The secretary shall send a notice in writing to the appellant and respondent stating the time and place of such consideration, at least ten days before such meeting.

(f) The appellant shall be given an opportunity to be heard, and so shall the respondent. The Council may limit its consideration to the record as disclosed in the matters filed with the secretary pursuant to paragraph (c) hereof, or it may allow the presentation of new evidence.

(g) The Council shall consider the entire record, all the evidence, including any new evidence adduced at hearings before the Council, and may affirm, reverse or modify the decision of the component society.

(h) The secretary of this Society shall notify in writing the appellant and respondent of the decision.

(i) The accused may be represented by a member of this Society at any such meeting of the Council. The attorneys for this

Society may be present at any such meeting, to advise the Council and accused on procedural matters. The Council may permit the accused to be represented by an attorney, in exceptional instances.

Section 4. The decision of the Council in disciplinary proceedings under Section 2 hereof, or an appeal under Section 3 hereof, shall be final and binding upon the accused or individual refused membership and his component society; provided that such person or his component society may appeal to the Judicial Council or other appropriate body of the American Medical Association. The Decision of the said Judicial Council or body shall be binding on this Society.

Section 5. The Council may continue any hearing provided for under this chapter, on such terms and conditions as may seem advisable to said Council.

Section 6. The Council may designate any member, or group of members, of this Society to represent the respondent and/or the component society to which the accused belongs at any hearing provided for in this chapter.

Section 7. All notices provided for in this chapter, unless otherwise provided, shall be mailed to the accused and others at the address carried on the roster of this Society, or the last known postoffice address.

Section 8. Members expelled from this society shall be eligible to membership after one year from the date of expulsion on the same terms and in like manner as original applicants.

CHAPTER XI—Rules of Conduct of Members

The principles set forth in the Principles of Medical Ethics of the American Medical Association, and the rules of professional conduct adopted by the House of Delegates of that Association, and those adopted by this Society, shall govern the conduct of members in their relations to the public and to each other.

CHAPTER XII—Rules of Order

The deliberations and proceedings of this Society
3365 shall be governed by parliamentary usage as defined in Robert's Rules of Order, unless otherwise provided by the constitution or by-laws.

CHAPTER XIII

Section 1. The House of Delegates by a two-thirds vote, provided a quorum in present, may order a general referendum.

Section 2. The Council by a one-third vote of all the members may also order a general referendum.

Section 3. The conduct of such referendum shall be under such referendum shall be under such terms and conditions as the referring body shall determine, and may be conducted by mail vote or any other means.

Section 4. A majority vote of all the members entitled to vote shall determine the question, and the decision so reached shall be binding upon the House of Delegates, the Council and the Society.

CHAPTER XIV—Amendments

These by-laws may be amended, deleted or repealed by the House of Delegates at any annual meeting or regularly called special meeting, by a vote of two-thirds of the delegates present, if a quorum is present; provided, the proposed amendment has laid on the table for one day, or a copy of the proposed amendment has been sent by the secretary of this Society to the secretary of each component society at least fourteen days prior to said meeting, or unanimous consent of all delegates present at said meeting is obtained.

CHAPTER XV

Upon the adoption of these by-laws, all previous by-laws are hereby repealed.

Plaintiff's Exhibit 5

3366 ARTICLES OF INCORPORATION

of

OREGON PHYSICIANS' SERVICE

KNOW ALL MEN BY THESE PRESENTS, That we, THOMPSON COBERTH of The Dalles, Wasco County, Oregon, W. W. BAUM of Salem, Marion County, Oregon, and EARL M. ANDERSON, of Portland, Multnomah County, Oregon, have this day associated ourselves together for the purpose of forming a private corporation under the general laws of the State of Oregon, and for that purpose do hereby make, adopt, execute and acknowledge in triplicate the following Articles of Incorporation:

ARTICLE I.

Name

The name of this corporation, and the name by which it shall be known, is Oregon Physicians' Service.

ARTICLE II.

Duration

The duration of this corporation shall be perpetual.

ARTICLE III.

The objects for which this corporation is formed and the enterprise, pursuits and business in which it proposes to engage, are:

(a) To contract or agree in Oregon with individuals, families, employes, associations, societies, or with employers for the benefit of employes, for furnishing of medicine, medical or surgical treatment, nursing, hospital service, ambulance service, dental service, or any or all of the above enumerated services or any other necessary services, contingent upon sickness, accident or death.

(b) To own, operate, lease, or otherwise provide or furnish ambulances, hospitals, wards, dressing stations or first aid stations.

(c) To contract or agree with other persons, associations, firms or corporations lawfully engaged within Oregon in furnishing medical or surgical treatment, nursing; hospital ambulance, dental or related services, to furnish

facilities, services and treatment of this corporation or through this corporation to persons covered by their contracts, and to require or permit such persons, associatons, firms or corporations to furnish their facilities, services and treatment to persons covered by contracts of this corporation.

3367 (d) To own, operate, lease, or otherwise provide or furnish ambulances, hospitals, wards, dressing stations or first aid stations.

(e) To purchase, own, hold, rent, lease, mortgage, sell, convey, and otherwise lawfully acquire, hold and dispose of real and personal property, or any interest therein, as may be necessary or convenient to carry into effect the objects of the corporation.

(f) To borrow money, and give its bonds, notes, coupons of this corporation, and other obligations therefor, and to secure payment thereof by trust deeds, mortgages, pledges, or liens on all or any of its property, real or personal.

(g) To purchase or acquire otherwise the whole or any part of the business, property, assets, stock, good will, rights, contracts and ownership of any person, firm, association or corporation doing a business similar to the business of this corporation or engaged in an enterprise similar or auxiliary to that of this corporation; to pay for the same or any part or combination thereof in cash, shares of the capital stock of this corporation, bonds, debentures, notes and other obligations of this corporation or otherwise by undertaking and assuming the whole or any part of the liabilities or obligations of the transferror; to undertake or assume the whole or any part of the bonds, mortgages, franchises, leases, contracts, indebtedness, liabilities or obligations of any such person, firm, association or corporation; to enter into agreements to do these things or options to do the things permitted by this paragraph; to conduct such acquired business or businesses in any lawful manner and to exercise all the powers necessary or convenient in and to the conduct and management of such business or businesses; to vote and otherwise exercise ownership and dominion over any stocks or interest thus acquired; to hold or in any manner to dispose of the whole or any part of the property or assets thus acquired or purchased.

(h) To purchase, hold, sell, exchange, transfer or otherwise deal in shares of its own capital stock, bonds, or other

obligations from time to time to such an extent and in such manner and upon such terms as its Board of Directors shall determine; provided, that this corporation shall not use any of its funds or property for the purchase of its own shares of capital stock when such use would cause any impairment of the capital belonging to this corporation; and provided, further, that shares of its own capital stock belonging to this corporation shall not be voted upon directly or indirectly.

(i) The corporation may and does hereby reserve the right to purchase, redeem, retire and cancel any or all of the then outstanding Class AA stock of the corporation at any time after the first day of January, 1942, in such amounts from time to time as the Board of Directors may determine, by paying to the respective holders of such bank in the City of Portland, Oregon, a sum or sums equal to the par value of the stock so purchased, redeemed, retired and cancelled, together with all the accrued and unpaid dividends thereon, if any. In case of such deposit, written notice thereof shall forthwith be given by the Secretary of the corporation to the respective holders of such stock by mailing such notice to such holders at their last known places of abode or business. Said national bank in which said sums are deposited shall be instructed to turn over to said stockholder, or his order, the money to which each Class AA stockholder is entitled upon receiving the certificate of stock held by such stockholder, together with a full receipt of such stockholder for all the claims he may have against the corporation on account of holding such stock.

(j) To do and perform, or cause to be done or performed, each and every act and thing necessary, proper or
3368 convenient to be done or performed in order to carry out the purposes of this corporation; the foregoing enumeration of specific powers shall not be construed to limit or restrict the exercise of all the legal rights, privileges and powers of such a corporation.

(k) Although this corporation is organized under the stock corporation laws, this corporation is designed to operate without a profit, and utilize its receipts for the purpose of providing medical and related services and supplies to contractees.

ARTICLE IV.

Principle Office

The principle office and place of business of this corporation shall be in the City of Salem, County of Marion and State of Oregon.

ARTICLE V.

Capital Stock

The authorized capital stock of this corporation shall consist of 110 shares of Class A. common stock of the par value of $50.00 each, and 180 shares of Class AA common stock of the par value of $25.00 each.

The preference, rights, privileges and restrictions of each class of stock are as follows:

1. Class A. stock shall be the only voting stock of the corporation. Consent in any statutory or other proceeding requiring consent of stockholders shall be vested in and exercised exclusively by the holders of Class A stock. No dividends shall accrue or be paid to holders of Class A stock. In the event of liquidation, dissolution or sale of the assets of the corporation, Class A stockholders shall be entitled to receive the par value thereof, but no more.

2. Class AA stock shall have no voting rights, nor rights to receive notices of meetings of stockholders. No person shall hold more than one share. No person shall be a holder of Class AA stock unless he is a member of the Oregon State Medical Society, or eligible for such membership. Class AA stock shall be subject to call and redemption as provided for in Article III, paragraph (i) of these Articles. In the event of liquidation, dissolution or sale of the assets of the corporation, holders of Class AA stock shall not be entitled to any distribution until after holders of Class A stock are paid the par value of their shares.

3369 Class AA stock shall also be subject to the following restrictions:

(a) Any holder of Class AA stock, if desirous of selling or transferring all or any of his shares of stock, or the executor or administrator of any deceased holder of Class AA stock, if desirous of selling or transferring all or any part of such shares belonging to the estate of such deceased, or the purchaser of any share or shares of stock sold on execution or judicial sale, if desirous of selling or trans-

ferring all or any part of such shares belonging to the estate of such deceased, or the purchaser of any share or shares of stock sold on execution or judicial sale, if desirous of selling or transferring any such share or shares, or any person holding such stock by virtue of a pledge or any lien, before bringing any suit, action or proceeding or doing any act to foreclose his lien or pledge, shall first deliver to the President or Treasurer of the corporation written notice of such desire to sell or transfer or of intention to foreclose or enforce his lien or pledge, designating the number of such shares to be sold, transferred or foreclosed, as the case may be, and the number of the certificate or certificates therefor;

(b) The Board of Directors shall thereupon have the option for ninety (90) days after receipt by the corporation of such written notice, of purchasing such share or shares for the corporation for the par value thereof, together with all the accrued and unpaid dividends thereon, if any. Payment for any such share or shares may be made by the Board of Directors by depositing such sum or sums to the credit of any such shareholder, executor, administrator, grantee, assignee, pledgee, or lienor, as the case may be, in any national bank in the City of Portland, Oregon, within thirty (30) days from the date on which the Board has exercised its option to so purchase. If such deposit is made, the Board shall give notice of such deposit by mailing to the last known address of such shareholder, executor, administrator, grantee, assignee, pledgee or lienor, as the case may be, and said bank shall turn over such money to the person entitled thereto upon the surrender of the certificate or certificates of such stock properly endorsed, plus the receipt in full by such person for all claims he may have against the corporation on account of said common stock or dividends, if any.

(c) Every holder of Class AA stock who shall cease to qualify as a stockholder under the By-laws of this corporation shall immediately offer all shares of stock owned or held for sale to and purchase by the corporation as above set forth whenever requested by the Board of Directors so to do, and no dividends shall be paid or determined upon any such share or shares after failure to comply with such request.

(d) Said Board shall not be obligated to purchase any share or shares of stock at the value above set forth unless

it shall think fit; but if the Board shall not exercise in writing its option to purchase, or if the Board shall not deposit the said purchase price as aforesaid, or if the Board shall formally refuse to purchase such stock, such shareholder, executor, administrator, grantee, assignee, pledgee or lienor shall be at liberty to sell such share or shares to any person whatsoever.

(e) It is the intent that all restrictions hereby imposed upon the sale or transfer of shares of stock shall apply to the sale or transfer of all shares of such stock, whether by the original stockholders or otherwise, and whether acquired through the voluntary or involuntary act of a shareholder or by operation of law; failure of the Board to exercise its option or to deposit as aforesaid the money to purchase such shares, shall not prevent the Board from exercising its option and purchasing such shares on any subsequent transfer or sale of such shares.

3370 IN WITNESS WHEREOF, We have to these presents, executed in triplicate, set our hands and seals this 6th day of December, 1941.

Thompson Coberth
W. W. Baum
Earl M. Anderson

* * * * *

3371 STATE OF OREGON,
COUNTY OF MULTNOMAH, *ss.*:

On this 6th day of December, 1941, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Earl M. Anderson, known to me to be the individual described in and who executed the foregoing instrument and acknowledged to me that he executed the same freely and voluntarily.

In Testimony Whereof, I have hereunto set my hand and affixed my Notarial Seal, this, the day and year in this instrument first written.

John J. Coughlin
(seal) Notary Public for Oregon

My commission expires: April 14, 1945

Plaintiff's Exhibit 6

3372 RE: LANE COUNTY CONSTITUTION

ARTICLE I.

Name of the Society

The name and title of this organization shall be the Lane County Medical Society.

• • • • • •

ARTICLE IV.

Eligibility

Every duly licensed physician residing in Lane County and having practiced in Lane County for at least six months who is of good moral and professional standing and practice in accordance with the principles of medical ethics of the American Medical Association shall be eligible to apply for membership in this Society. At the time of making application, physicians shall subscribe in writing to the principles of medical ethics of the American Medical Association.

• • • • • •

3373

• • • • • •

ARTICLE VI.

Officers

Section 1. The officers of this Society shall consist of a president, president-elect, vice-president, secretary-treasurer, six councilors and as many delegates as this Society shall be entitled to under the constitution and by-laws of the Oregon State Medical Society.

Section 2. The officers other than the six councilors shall be elected annually pursuant to the by-laws.

Section 3. The six councilors shall be elected to serve ~~three~~ a two year term.

ARTICLE VII.

Council

Section 1. The president, president-elect, retiring president, vice-president, secretary-treasurer and councilors shall form the council of this Society.

Section 2. The council shall be the executive body of this Society and act as the board of censors.

Section 3. The council shall have the full authority and power of the Society between meetings of the Society unless some authority of power is specifically reserved to the Society; provided, the council shall follow any policy laid down by the Society in regular or special meeting.

* * * * *

3374

* * * * *

ARTICLE IX.

Charter

This Society exists under the charter of the Oregon State Medical Society.

* * * * *

ARTICLE XI.

Principles of Medical Ethics

The principles of medical ethics of the American Medical Association and the rules of professional conduct adopted by the house of delegates of that Association or by the Oregon State Medical Society are hereby incorporated herein, the same as though set out in full, and they shall be the code and standard of conduct of the members of this Society.

* * * * *

3375

BY—LAWS

CHAPTER 1—Membership

* * * * *

3376

* * * * *

Section 7 (a) Applicants for active, junior or associate membership shall make a written application which shall be endorsed by two active members in good standing. The application shall be accompanied by a signed statement in writing to conform to the principles of medical ethics of the American Medical Association.

(b) The application shall be read in open Society and referred to the council. The council shall consider the

application and shall recommend approval or disapproval thereof.

(c) A recommendation of the council shall be acted upon at a meeting of the Society.

(d) A ⅔ vote of the council shall be necessary to
3377 recommend approval and ⅔ of all such members present who have a right to vote shall be necessary for election at such meetings of the Society.

(e) Such applications shall be deemed to be an agreement on the part of the applicant to be bound by the constitution, by-laws and duly adopted amendments to the constitution and by-laws of this Society, and the actions of the Society and officers thereof taken pursuant to the constitution and by-laws, exclusive of any other remedy, legal or otherwise. This is not to be construed as adding anything to the effect of such application but merely as a statement of present rights and privileges of members. If any present member shall not desire to be bound by this statement, it shall be his duty to resign from the Society forthwith.

Section 8. No person who is under sentence of suspension or expulsion of this Society or whose name has been dropped from its roll of members shall be entitled to any of the rights or benefits of this Society nor shall be permitted to take part in any of its proceedings until such time as he has been relieved of such disability.

CHAPTER 2—Dues and Delinquency

Section 1. There shall be an admission fee to this Society of $5.00 which must accompany the application. If the application is not accepted the admission fee will be returned.

Section 2. The annual dues shall be $3.00 each year to the Lane County Medical Society plus whatever amount shall be adopted by the Oregon State Medical Society for its annual dues, provided that a life member shall only be required to pay the dues required by the Oregon State Medical Society.

• • • • •

3378

• • • • •

CHAPTER 4—Election of Officers

• • • • •

3379

* * * * *

Section 5. Delegates to the house of delegates of the Oregon State Medical Society shall consist of the president and the president-elect or their duly elected delegates. If more than two delegates are allowed, the third delegate shall be the secretary-treasurer or his duly elected alternate.

Section 6. At the annual meeting of the Society, alternate delegates shall be elected.

Section 7. If there are no delegates or alternate delegates from this Society present at the meeting of the house of delegates of the Oregon State Medical Society, acting delegates having all the rights and privileges of regular delegates may be selected from among the active members of this Society in the manner required by the constitution or by-laws of the Oregon State Medical Society.

CHAPTER 5—Duties of Officers

* * * * *

3380

* * * * *

Section 4. The secretary-treasurer shall record the minutes of the meetings and receive and care for all records and papers belonging to the Society, including its charter. He shall provide for the sending of all notices required under the constitution and by-laws. He shall make and keep a list of the members of the Society in good standing and provide information on the membership required by the Oregon State Medical Society. He shall collect and transmit to the Oregon State Medical Society the annual dues of members of this Society. He shall receive and keep account of the funds of this Society and disburse such funds on direction of the council or the Society.

Section 5. The delegates shall attend and faithfully represent this Society and the profession of this county in the house of delegates of the Oregon State Medical Society. The delegates shall hold a meeting before each meeting of the house of delegates of the Oregon State Medical Society to select a chairman and to receive instructions from the council or the Society. The chairman of the delegates shall make a report on the meetings of the house of delegates at the annual meeting of the Society and as often during the year as may be necessary to keep the members

of the Society advised of the happenings before the house of delegates of the Oregon State Medical Society.

CHAPTER 6—COMMITTEES

• • • • • •

3381

• • • • • •

Section 7. The Committee on Medical Ethics shall make a study of this subject, obtaining all data possible from the American Medical Association and the council of the Oregon State Medical Society; it shall act in an advisory capacity to the officers of the Society and shall present to the Society an educational program on medical ethics at least once a year.

CHAPTER 7—DISCIPLINARY PROCEEDINGS

Section 1 (a) A member who has been convicted
3382 of a felony or whose license to practice medicine has been revoked by the Oregon State Board of Medical Examiners shall be dropped automatically from the rolls of this Society as of the date of such conviction or revocation, unless the council within thirty days of the date of such conviction shall decide that such forfeiture of membership is unjustified; provided that if the council decides that such a member shall not be dropped because of such conviction, he shall be held to have been continuously in good standing insofar as the operation of this subsection is concerned.

(b) A member who is guilty of gross misconduct either as a physician or citizen or who violates any of the provisions of the constitution or by-laws shall be liable to censure, suspension or expulsion.

(c) The procedure in hearing charges and disciplinary action shall be the following where no extraordinary circumstances are present:

(1) The council shall make a preliminary examination into the merits of the case and make kindly efforts in the interests of peace, conciliation and reformation. The accused shall be given an opportunity to be present before the meeting of the council and an opportunity to be heard in his own defense. The accuser shall also be given an opportunity to be present where feasible. A member or members of any grievance committee of the Society may also be present.

(2) If the condition or charge under consideration is not satisfactorily corrected or explained by such preliminary meeting, formal charges in writing may be filed with the secretary against such member by the accuser or any other person or committee. The secretary shall forthwith mail a copy of the charges to the accused and to the president of the Society at least ten days prior to any meeting at which the charges are to be considered.

(3) The council shall proceed to consider such charges. A notice of the time and place of hearing the charges shall be mailed by the secretary at least seven days prior to the meeting. The accused shall be given an opportunity to be present at such meeting and to present any evidence that he might have bearing upon the charges.

(4) After considering such charges and whatever evidence is presented in support or in opposition thereto, the council shall determine (a) that the charges are not sustained, or (b) that the charges are sustained and
3383 that the accused be censured, suspended or expelled.

(5) It shall require a vote of ⅔ of the council present to expel or suspend the membership of any member of the Society.

(6) The action of the council shall be final except that the accused or the Society may appeal to the Oregon State Medical Society and the American Medical Association.

(7) At such hearings the council shall not be limited by the legal rules of admission of evidence, but shall consider carefully the credibility of any indirect evidence.

(8) At all hearings provided for herein, an attorney selected by the Society may be present to advise the council and the accused as to procedure. No attorney for the accused may be present or participate at such hearings unless specifically permitted by the council.

(9) The council may designate a committee of the Society to be known as a grievance committee to file written charges or to perform other functions in disciplinary proceedings.

(10) The council may continue any hearing hereunder if deemed advisable.

(11) If the accused shall not appear at any meeting of which he has been duly notified, he shall be deemed in de-

fault and forfeit any rights he might have had to appear unless he shall file a written excuse satisfactory to the council.

(12) All notices provided for herein shall be mailed to the accused member at the address of the accused on the roster of the Society.

* * * * *

Plaintiff's Exhibit 7

3385 CONSTITUTION AND BY-LAWS

OF THE

JACKSON CO. MEDICAL SOCIETY

CONSTITUTION

ARTICLE I. NAME AND TITLE OF THE SOCIETY.

The name and title of this organization shall be the Jackson County Medical Society.

ARTICLE II. PURPOSE OF THE SOCIETY.

The purpose of this society shall be to bring into organization the Medical profession of Jackson County with a view to the extension of medical knowledge, to the advancement of medical science, to elevate and make effective the opinions of the profession in all scientific, legislative, public health, material and social affairs, and to cooperate with the same. To the promotion of friendly intercourse among physicians, to the guarding and fostering of their material interests; and to the enlightment of public opinion in regard to the great problems of medicine, so that the profession shall maintain high and honorable standards within itself, and be useful to the public in the prevention and cure of disease, and in prolonging and adding comfort to life. That this society by its achievements and honorable history may be entitled to join with other county societies to form the Oregon State Medical Society, and through it, with other state organizations, to form and maintain the American Medical Association.

ARTICLE III. COMPOSITION OF THE SOCIETY.

This society shall consist of Active, Associate and Honorary members.